Hazardous Materials Management

in the

Bureau of Land Management

IN REPLY REFER TO:

United States Department of the Interior

3046 (931)

BUREAU OF LAND MANAGEMENT
222 North 32nd Street
P.O. Box 36800
Billings, Montana 59107

December 27, 1984

Information Bulletin No. MT-85-49

To: District Managers

From: Deputy State Director, Division of Lands and Renewable Resources

Subject: Information Summarizing BLM Policy on Management of Hazardous Materials

Enclosed is the above information that just arrived from WO. It was to be distributed to hazardous waste contacts during their briefing by the WO hazardous materials management staff in the State Office, on December 13, 1984. It was delayed in the mail and has not been available until now.

for John A. Kwiatkowski

1 Enclosure
Encl. 1 - BLM Policy on Management of Hazardous Wastes (81 pp)

Distribution
WO (501) - 1 w/o encl.
D-558A - 1 w/o encl.
RAHs - 1 w/ encl.
SO M.T. - 1 w/ encl.

Hazardous Materials Management

in the

Bureau of Land Management

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Status of Hazardous Materials Management in BLM

A. Program Goals

- o Protection of the health and safety of the public, Federal land users, neighbors, and Bureau employees.
- o Compliance with applicable Federal and State laws, rules, orders, etc., within the context of the Bureau's statutory mission as a Federal natural resource manager.
- o Cleaning up past problems, controlling current problems, and minimizing future problems of hazardous materials on public lands in a cost-effective manner.

B. Current Program Activities in WO

1. Setting up the new program (admin., budget, etc.).

2. Preparing policy and field guidance (including general program guidance expected to be out by the new FY).

3. Assistance and information on specific projects and issues to field offices and program divisions.

4. Assessing to values and cost-effectiveness of management technologies for application in the program.

5. Establishing communications channels with and among Bureau programs and with other agencies and organizations that can support our hazardous materials management activities.

6. Supporting decisionmaking in the Department on related issues and programs.

7. Initiating cost-effective, national contracting procedures for site assessment, planning, and cleanup.

8. Training development for field personnel.

C. FY '85 Field Office Activities

1. Initiating Resource Area based, hazardous waste site identification and reporting using existing information in most cases to set FY '86-87 priorities.

2. Initiating Land Status assessments on high priority waste sites.

3. Initiating site and waste evaluations, and site plans for control or cleanup on high priority sites, through Bureauwide contractors.

4. Initiating any small hazardous material cleanup projects currently ready for such actions, on a priority basis, and using Bureauwide contractors.

5. Identifying operators or perpetrators that are the cause of the problems on priority hazardous waste sites so that claims or litigation can be made to recover Federal costs and damages.

D. Program Strategy

1. Limited Mission - Limited Size Organization - emphasis on coordination of current and expanded compliance efforts in existing program, and prudence in handling waste on the P.L.

2. Reducing future risks, costs and liabilities by modifying procedures and policies to shift cost to the user. (e.g., lands policy, disposal of hazardous waste only after lands have been transferred in fee, also reviewing solid waste R&PP program, mining law policy to require a permit before approving mining plan where wastes are a potential problem.) Reviewing bonding and insurance procedures but these are very complex, expect report to Director by mid-'85.

3. Looking for new sources of funds for cleanups: e.g., Superfund, emergency funds, making dumpers cleanup or pay later, in order to protect existing BLM budgets.

4. Maintaining broad MBO schedule and filling in detail quarterly.

5. Contracting out all field work that requires contact with hazardous waste, preferably through EPA's contractors.

E. Program Budget

1. FY '85 budget of $1.3 million — because there is so little information request for FY '86 is the same.

2. This budget covers the base program only. It does not include:

   a. Money for any major scheduled cleanups.
   b. Other program expansions - e.g., Lands R&PP compliance work, mine closings by mineral operations, etc.
   c. Money for emergency response either minor or major. (Minor emergency hazardous waste responses - spills, dumps presenting a risk to public safety will be covered by special account.) (We are seeking funding for major emergencies that EPA can't cover.)

3. Budget will fund some work in all State offices that have hazardous waste problems and will provide for expanded training efforts.

4. FY '85 priorities are being included in PAWP.

Hazardous Materials Management
Definition of Terms

I. Disposal

Sec 1004(3) of RCRA

The term 'disposal' means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

II. Facility

Sec 101(9) of CERCLA

"Facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel. In U.S. vs. Metate Asbestos Corp., ...In order to show that an area is a "facility," the plaintiff need only show that a hazardous substance under CERCLA is placed there or has otherwise come to be located there.

III. Hazardous Material

The terms "hazardous substance," "hazardous waste," "hazardous chemical substance," and "toxic pollutant" are all legally defined terms that overlap each other but are not identical. Since the BLM is involved in all of these categories, the term "hazardous material" was adopted to cover all of them.

IV. Hazardous Substance

Sec 101(14) of CERCLA

"Hazardous substance" means (A) any substance designated pursuant to section 311(bX2XA) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, includingcrude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

V. Hazardous Waste

Sec 1004(5) of RCRA

> The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

VI. Imminently Hazardous Chemical Substances and Mixtures

Sec 7(f) of TSCA

> The term "imminently hazardous chemical substance or mixture" means a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment. Such a risk to health or the environment shall be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or that any combination of such activities, is likely to result in such injury to health or the environment before a final rule under section 6 can protect against such risk.

VII. Liability

A. Tort liability is based upon conduct that creates an unreasonably or unacceptable risk of harm. Such conduct may be intentional, negligent or so inherently risky that the defendant will be held liable even without fault for any harm that ensues."

1. Intentional

"Intent need not involve any motive to inflict harm. Intent can be inferred from conduct undertaken by an actor who clearly forsees its consequences. The law presumes that one intends the natural and probable consequences of one's acts in the light of surrounding circumstances of which one must be aware."

2. Negligence

" Negligence is a breach of duty to conform to the required standard of care for protection of others against unreasonable risks of harm. This is the standard that a prudent person in the defendent's position would have observed considering the risk his activity creates."

3. Inherently Risky (Strict Liability)

"This is liability without fault, imputed to the defendant even though he acted neither negligently nor intentionally with respect to the consequences of his actions. One who carries on abnormally dangerous activity is subject to liability for harm to person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm."

In making the determination of whether an activity is ultrahazardous, courts have traditionally scrutinized six factors: (1) the existence of a high degree of risk, (2) the likelihood that the resultant harm will be great, (3) the ability to eliminate the risk by exercising reasonable care, (4) the extent to which the activity is not common in the community, (5) the appropriateness of the activity to the place where it is carried on, and (6) the activity's value to the community.

B. Vicarious Liability

"There are also rules of vicarious liability under which indirectly responsible parties may be held strictly liable for damages." A parent corporation cannot "...succeed in insulating itself from tort liability by creating a shell of a subsidiary for that purpose. In such cases, courts can be expected to pierce the corporate veil."

Corporate officers may bear vicarious liability for the environmental torts of subordinate employees. The law of negligence supplies the usual standard for determining liability in such cases: If the defendant's general responsibility has been delegated with due care to some responsible subordinate or subordinates, he is not himself

personally at fault and liable for the negligent performance of this responsibility unless he personally knows or personally should know of its non-performance or mal-performance and has nevertheless failed to cure the risk of harm." Moreover, a corporate supervisor or officer cannot escape liability by pleading ignorance of facts he ought to know in the course of discharging his corporate duties. "...[W]here the duty to know exists, ignorance resulting from a neglected official duty creates the same liability as actual knowledge..."

Recent court decisions have ruled that the creation of a system that ensures the ignorance, by supervisors or officers, of potentially harmful actions or conditions is a criminal offense. Finally, "... a lessor may become liable for the tort of his lessee upon reversion of the property to the lessor."

C. Joint and Several Liability

A legal concept that says that if two or more parties have contributed hazardous materials to a site, either or both parties are liable for the entire cleanup cost unless they can, among themselves, apportion out the costs. The landowner is (or can be) considered one of the "parties" to the action and therefor liable in part or in whole.

VIII. Person*

Sec 101(21) of CERCLA

> Person means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

Sec 1401(12) of SDWA

> The term person means an individual, corporation, company association, partnership, State, municipality or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency).

* See Sovereign Immunity for applicability to Federal agencies.

IX. Pollution

Sec 502(19) of CWA

The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

X. Release

Sec 101(22) of CERCLA

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

XI. Sovereign Immunity

A legal concept based upon English Common Law that makes the sovereign (king, etc.) immune from compliance with provincial or other laws and from suit unless the sovereign wishes to be.

In the U.S., the Federal Government acting as "sovereign" (having displaced the king) is not required to follow State or local law nor can it be sued unless it agrees to be.

Waiving sovereign immunity makes the Federal Government, its agencies and employees open to suit and under the same obligations to follow State and local laws as any citizen is.

Sovereign immunity is waived in CWA (Sec 505(a)); CERCLA (Sec 101(21)); RCRA (Sec 6001 and 6003); CAA (Sec 118); SDWA (Sec 1447(a)); TSCA (Sec 20); and E.O. 12088 (Sec 1-101 and 1-103).

In Sierra Club vs. Peterson (April 13, 1983), the U.S. Court of Appeals, Ninth Circuit upheld a lower court decision that a Federal agency must comply with State requirements or secure a Presidential exemption from E.O. 12088.

XII. Toxic Pollutant

Sec 502(13) of CWA

The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

Section 2

Information and Instruction

Memoranda

GAIRY

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 4 1983

Memorandum

To: Director, Fish and Wildlife Service
Director, National Park Service
Director, Geological Survey
Director, Bureau of Mines
Director, Minerals Management Service
Director, Bureau of Land Management
Director, Office of Surface Mining
Commissioner, Bureau of Reclamation
Deputy Assistant Secretary, Indian Affairs

From: Assistant Secretary - Policy, Budget and Administration

Subject: Bureau Compliance with the Resource Conservation and Recovery Act of 1976 and the Comprehensive Environmental Response Compensation and Liability Act of 1980

This is to provide you with information about the Resource Conservation and Recovery Act of 1976 (RCRA) and the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) and to provide guidance in meeting Bureau responsibilities in regard to these environmental laws. Both Acts provide for strict liability of all involved persons, including the Federal Government.

RCRA was passed as an amendment to the Solid Waste Disposal Act to, in addition to other purposes, regulate the management of hazardous wastes. It applies to active disposal operations and provides a permitting mechanism for generators of hazardous wastes, transporters of hazardous wastes, and owners and operators of hazardous waste treatment, storage, and disposal facilities. The Act provides for development and implementation of State programs under Federal guidelines. It should be noted that the Act explicitly waives sovereign immunity - Federal agencies and officials are subject to all applicable State and local substantive and procedural requirements as well as Federal regulations. EPA published regulations and procedures for implementing the hazardous waste identification and reporting requirements May 19, 1980. Bureaus were requested to review their activities and seek any needed permits (PEP memo of 6/5/80, ER-80/179).

CERCLA provides for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment including the cleanup of inactive hazardous waste sites. CERCLA also established a cleanup mechanism through the Hazardous Substance Response Fund (Superfund) and broadened the National Contingency Plan (NCP). The Superfund, however, cannot be used for remedial action at Federal sites, and Federal agencies are expected to require cleanup by liable parties or to use direct appropriations for this purpose. Section 103(c) of this Act established reporting requirements for any sites where hazardous substances are or have been stored, treated, or disposed of. It also provides criminal liability for persons (including Federal officials) who knowingly fail to report a site. Bureaus were requested to identify and report any such sites (PEP memo of 4/17/81, ER-81/690). Bureau responses to this requirement,

however, were fragmentary and incomplete. In addition, bureaus have been requested to report any funding for site cleanup in their semiannual input to the OMB Circular A-106 report.

You should be familiar with the requirements of these two Acts and develop programs and procedures tailored to the needs of your bureau to ensure that your responsibilities are fully met. Basically, each program should include procedures for site inventory, hazard ranking, remedial investigation, and remedial action.

1. Site Inventory. - This should include a thorough search of existing records and employee knowledge, consultation with local officials and, where appropriate, solicitation of information from other knowledgeable sources and the general public. Bureaus with responsibility for extensive land areas should consider use of aerial photography or satellite imagery. Aerial photographic coverage is readily available, is being used by many States for the same purpose, and in some cases is already being used by bureau resource professionals in field work for other programs.

This inventory and initial assessment should include field verification of the site, identification of the materials and estimate of quantities involved, rough estimates of environmental hazards and cleanup and reclamation costs, and efforts to identify responsible parties. This step is analogous to §300.63 and 300.64 of the NCP. Brief training in recognizing possible sites may be needed and can be arranged through EPA or the task may be partially or totally contracted out.

2. Hazard ranking. For those sites identified or suspected as being hazardous, the next step should be to evaluate more thoroughly the degree of hazard at each site. Bureaus should use the Hazardous Waste Site Ranking Systems (HRS) developed by EPA for determining sites for inclusion on the National Priorities List (NPL). Although there is some controversy in the use of this system, it has two major advantages. One, it is being used now by EPA and the States; and two, it will produce rankings that are comparable with sites on the NPL. The Users Manual is published as Appendix A to the NCP (47 FR 31219). Because of the skills required you may want to contract out this step, which is analogous to §300.66 of the NCP.

3. Remedial investigation. For those sites which receive an HRS score, a remedial investigation should be conducted to determine the appropriate extent of remedial action. This may include consideration of initial measures, source control actions and offsite actions; and, if necessary, detailed investigations to develop alternative solutions, costs, and engineering designs. It should also complete the investigation of liability of any other responsible parties. This step is analogous to §300.68 (e-j) and 300.70 of the NCP. The more detailed investigations are likely candidates for contracting out.

4. Remedial action. First priority should be given to seek aggressively remedial action by any identified responsible party. Second priority should be given to those remedial actions readily accomplished through operation and maintenance funds. Third priority should be given to budgeting and cleanup of those sites which receive HRS scores which would place them on the NPL. The current cutoff is a score of 28.50, but this will change each year. All sites in this third priority should appear in your semiannual input to the OMB A-106 report.

Superfund monies are available for use on Federal lands and facilities only for removal actions and are not available for costs of remedial actions. If cleanup reimbursement from the Fund is appropriate, approval must be sought from EPA prior to any expenditures; retroactive approval will not be given. The Office of Environmental Project Review's Regional Environmental Officers can assist in any consultations with EPA's regional offices.

Bureaus should review their present hazardous waste compliance status and project their program needs for FY 84 and FY 85 in regard to each step - inventory, ranking, investigation, and action. Budget requests should identify funds required to carry out this program. My staff is available to assist as needed.

cc: Assistant Secretaries

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

June 9, 1983

Instruction Memorandum No. 83-603
Expires 9/30/84

To: AFO's

From: Director

Subject: Treatment of Nuclear or Hazardous Material in the Review of 43 CFR 3809 Plans of Operations

The increasing national concern over nuclear or hazardous material requires that the Bureau consider such material in the analysis of plans of operations filed pursuant to 43 CFR 3809. Under certain instances, material generated by mining and milling operations may be classed by Federal regulations as nuclear or hazardous material.

The handling of nuclear or hazardous material is subject to regulation by the Nuclear Regulatory Commission (NRC) or the Administrator of the Environmental Protection Agency (EPA). These two agencies or their designated State-level counterparts are charged with the issuance of licenses or permits to any individual or corporation that handles nuclear or hazardous material. Part of the process of issuing such licenses or permits is the development of site-specific stipulations that must be followed by the applicant as a condition of the license or permit. The NRC regulations that address the licensing of nuclear material are found in 10 CFR Part 40. The NRC regulations that address environmental analysis and protection are found in 10 CFR Part 51. The EPA regulations that address hazardous material are found in 40 CFR Parts 122-124, 260-265 and 300.

When analyzing a plan of operation that involves the regulating, licensing or permitting of nuclear or hazardous material, the Bureau will not be the agency that develops stipulations for the proper handling of these materials. This is properly the responsibility of the appropriate regulatory agency involved. The Bureau will presume that the conditions and stipulations required by the regulatory agency are based on the best, reasonably, and economically available control technology approved for use by the NRC or EPA. Any residual impacts arising from the limitations of authorized technology are a necessary and due impact to the public lands that cannot be avoided. Possession of a license or permit for nuclear or hazardous materials will be deemed prima facie evidence that unnecessary or undue degradation of the public lands will not result from that portion of the proposed plan of operations. Portions of the proposed plan of operations not directly related to nuclear or hazardous material are still within the Bureau's responsibility to review and to determine if unnecessary or undue degradation will result.

When the review of the plan of operations reveals that nuclear or hazardous material requiring a license or permit is involved the Bureau will check the plan of operations to ensure that the operator has provided the following items:

1. Copies of the issued license or permit;
2. Stipulations or conditions placed on the operator as a part of the license or permit; and
3. A copy of the environmental analysis or comparable documents prepared by the authorizing agency.

A written statement from the authorizing agency that the license or permit will be issued at the end of a required waiting period is sufficient, if it is accompanied by the stipulations or conditions and the environmental analysis or comparable documents. Otherwise, the plan of operations will be rejected until the license or permit has issued. In those instances where a state permit apparently will not be issued, or documents comparable to an environmental analysis will not be prepared, contact the Washington Office (690) for guidance.

When a plan of operations is deemed to be complete, the Bureau's review of the plan will be completed within the timeframes required by 43 CFR 3809.1-6. The Bureau's analysis of the plan will incorporate NRC and EPA environmental analysis or comparable documents and stipulations by reference, and these documents will be a part of the official record to contain in the casefile. Because the EPA rules require that Federal or State RCRA permits hold that the Bureau is liable as landowner for damages, or cleanup, or both caused by violations of those permit terms, our approval of a plan must be conditioned on strict compliance with those Federal or State permits. Our analysis will consider the impacts of the proposal on Federal lands and resources that are within the Bureau's area of responsibility for review. Mitigating measures to prevent unnecessary or undue degradation will be developed during the analysis. The plan will be modified by adding these mitigating measures. No matter what level of environmental analysis is required by a proposed plan of operations, the approval of the plan that contains mitigating measures that will prevent unnecessary or undue degradation is mandatory.

If you have any other questions on this matter contact Rick Deery, (WO-680) at 343-8537 or Bob Sulenski, (WO-690) at 343-3207.

James M Parker

Associate Director

IN REPLY REFER TO:

3809 (680)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

June 9, 1983

Instruction Memorandum No. 83-604
Expires 9/30/84

To: All Field Officials

From: Director

Subject: Treatment of Hazardous or Nuclear Material in Monitoring Compliance with Approved 43 CFR 3809 Plans of Operations

Monitoring compliance with approved plans of operations that involve hazardous or nuclear material requires that all personnel understand the Bureau's role in regulating these materials. The handling of hazardous or nuclear materials is subject to such regulations as thought to be necessary by the Nuclear Regulatory Commission (NRC) or the Administrator of the Environmental Protection Agency (EPA). The NRC regulations are found in 10 CFR Parts 40 and 51. The EPA regulations are found in 40 CFR Parts 122-124, and 260-265. Bureau compliance personnel should become familiar with these regulations and the National Oil and Hazardous Substances Contingency Plan, 40 CFR 300.

The NRC and the EPA or their designated State-level counterparts are charged with the issuance of licenses or permits to any individual or corporation that handles nuclear or hazardous material. These licenses and permits contain site specific stipulations that must be followed by the operator. Compliance with these stipulations is to be made a condition of our approval of 3809 plan of operations.

Under the Resource Conservation and Recovery Act (RCRA) EPA or the designated State may issue disposal facility permits stating that the Bureau, as land owner, is liable if an operator allows an unpermitted discharge or violates any other permit condition. The Bureau would also be liable under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the case of an unpermitted discharge. Releases of nuclear material regulated by NRC carry some liability for the Bureau, and are of extreme concern. Because of this, Bureau compliance personnel should monitor operations that involve nuclear or hazardous waste materials for compliance with any containment or treatment provisions included in the NRC or RCRA stipulations.

Actual Federal enforcement of RCRA permit or NRC license stipulations is provided by EPA and NRC or the States designated by those agencies. These enforcement authorities have already been delegated to States that choose to operate enforcement programs. The Bureau is not responsible for Federal enforcement of RCRA permit or NRC license stipulations. It is in the Bureau's interest, however, in view of our potential liability, to ensure that operators comply fully with the RCRA and NRC stipulations. Since we are not the enforcement agency, we will document and report any apparent violations of RCRA permits or NRC licenses to the appropriate State or Federal agency for enforcement action.

The Bureau will also continue to monitor operations to make sure that operators comply with provisions of the BLM portions of approved plans that are intended to prevent unnecessary or undue degradation of resources that are within our areas of expertise, taking any actions needed to protect these resources.

When confronted by an apparent release of hazardous material, the matter will be immediately reported to the National Response Center (FTS-426-2675 or COM 800-424-8802) as required by 40 CFR 300.36. An apparent release of nuclear material will be reported to the appropriate State agency, if one exists, and the appropriate NRC Regional Office listed in 10 CFR 20, Appendix D. (Enclosure 1-1).

In all cases involving a spill or release that originates from an operation conducted under an approved plan, the operator has the primary responsibility to take immediate containment and other necessary control measures. The nature and extent of Bureau involvement will be directed by the EPA's On-Scene Coordinator (OSC). The Bureau will not assume the lead role, but will offer any assistance within its power to provide, including restricting access to the immediate area. Bureau personnel and capitalized equipment will not be directly involved in the immediate containment or control activities unless specifically requested by the OSC and authorized by the Director, Bureau of Land Management. A report by memorandum detailing the incident, response actions, apparent damages and any costs incurred by the Bureau must be sent to Director (690) within 5 working days after the response action is completed.

If there are any questions regarding this matter, please contact Rick Deery, (WO-680), at 343-8537 or Bob Sulenski, (WO-690), at 343-3207.

James M Parker

Associate Director

1 Enclosure:
Encl. 1 - 10 CFR 20, Appendix D (1 p)

Appendix D—United States Nuclear Regulatory Commission, Inspection and Enforcement Regional Offices

	Address	Telephone (24 hours a day)
Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.	Region I, USNRC, Office of Inspection and Enforcement, 631 Park Ave., King of Prussia, Pa. 19406.	(215) 337-5000
Region II: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, Virgin Islands, and West Virginia.	Region II, USNRC, Office of Inspection and Enforcement, 101 Marietta Street, Suite 3100, Atlanta, Ga. 30303.	(404) 221-4503
Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Region III, USNRC, Office of Inspection and Enforcement, 799 Roosevelt Rd., Glen Ellyn, Ill. 60137.	(312) 932-2500
Region IV: Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming	Region IV, USNRC, Office of Inspection and Enforcement, 611 Ryan Plaza Dr., Suite 1000, Arlington, Tex. 76012.	(817) 465-5100
Region V: Alaska, Arizona, California, Hawaii, Nevada, Oregon, Washington, and U.S. territories and possessions in the Pacific.	Region V, USNRC, Office of Inspection and Enforcement, 1450 Maria Lane, Suite 210, Walnut Creek, California, 94596.	(415) 943-3700

Encl. 1

3809 (680)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

August 23, 1983

Instruction Memorandum No. 83-796
Expires 9/30/84

To: All Field Officials

From: Director

Subject: Bonding Requirements for Plans of Operations Authorized Under 43 CFR 3809

The use of bonds as a condition for the approval of a plan of operations is authorized by 43 CFR 3809.1-9. Recent inquiries on this subject made to the Washington Office by operators of mineral properties and the Bureau's Field Offices prompt us to remind you of the policy on bonding in the 3809 program.

Bonds should not be required of an operator unless a record of noncompliance has been established. A record of noncompliance is established when an operator ignores a notice of noncompliance or knowingly conducts operations other than casual use without submitting a notice or acquiring an approved plan.

When an operator is conducting operations under a State reclamation bond, the Bureau's bonding requirements are satisfied. If the State bond covers the area of operations, but is less than the amount that the Bureau has determined is necessary to reclaim the disturbance, a second bond should not be required of an operator. A second bond should be required only when a record of noncompliance has been established by the operator.

This policy is standard procedure for all cases, even in those instances where a State/Bureau cooperative agreement on bonding has not been consummated. In those circumstances, if the State releases the bond before reclamation is completed to the Bureau's satisfaction the operator is still required to comply with all of the Bureau's reclamation requirements contained in the approved plan. Failure to do so may result in the authorized officer issuing the operator a notice of noncompliance or seeking a court order to ensure that the reclamation is completed.

We also wish to remind you that there are no Bureau-wide forms for bonds in the surface management program. If bonds are going to be required of an operator, a letter of agreement must be used. If there are any questions regarding this matter, contact Rick Deery at FTS 343-6537.

James M Parker

Associate Director

IN REPLY REFER TO:

United States Department of the Interior

3046 (690)

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

January 17, 1984

Information Memorandum No. 84- 107
Expires 9/30/85

To: State Directors

From: Director

Subject: Preliminary Surveys for Determination of Damage Due to Oil Discharges or Hazardous Substance Releases

The enclosed memorandum (ER 83-2) was developed and issued by the Department of the Interior's Office of Environmental Project Review (OEPR) and signed on November 1, 1983. It describes the procedures for conducting preliminary surveys to determine whether damages have occurred to natural resources under the trusteeship of the Secretary of the Interior.

All managers should take note of the requirements of the OEPR memorandum and ascertain how best they can be fitted into the overall BLM mission of multiple resource management.

Guidelines for such surveys will be prepared for your use as soon as possible by the W.O. During the interim period before the guidance is issued, any questions should be directed to the W.O. Division responsible for the resource or activity.

James V. Parker
Associate Director

1 Enclosure
Encl. 1 - OEPR Memorandum, dated 11/1/83 (10 pp)

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 1 1983

PEP - ENVIRONMENTAL REVIEW MEMORANDUM NO. ER83-2

To: Heads of Bureaus and Offices

From: Office of Environmental Project Review

Subject: Preliminary Natural Resources Surveys

1. Purpose. The purpose of this memorandum is to delineate Departmental procedures for conducting preliminary surveys of oil discharges and hazardous substance releases (incidents or sites) to determine whether damages have occurred to natural resources under the trusteeship of the Secretary of the Interior.

2. Authority. Sections 107 and 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, also known as Superfund Act); Section 311 of the Clean Water Act, as amended (CWA); Executive Order 12316; and Subpart G of the National Oil and Hazardous Substance Contingency Plan (NCP).

3. Scope. These procedures pertain only to determining whether or not natural resources under the trusteeship of the Department are present in the vicinity of an incident or site and, if present, whether or not damages have occurred to them from that incident or site since December 10, 1980. These procedures do not pertain to a formal assessment of the degree or extent or the value of any such damages found to exist nor do they pertain to responses, including removal or remedial actions, conducted pursuant to the NCP (910DM4).

4. Natural Resources Trust. CERCLA provides that the Federal and State Governments, as trustees for natural resources, may bring claims against responsible parties and/or the Superfund for any damages to these resources caused by the release of hazardous substances. CERCLA also provides that any claims for damages caused by oil discharges which are compensable, but unsatisfied, by the CWA may be brought against the Superfund. States are trustees for natural resources within their borders including the territorial sea. Federal agencies are trustees only: (1) for those natural resources within the sovereign jurisdiction of the Federal Government and (2) for those resources which they manage or protect. These limitations are interpreted as follows: "Sovereign jurisdiction" pertains to those resources seaward of the outer limit of the territorial sea and those resources within States where the Federal Government has established or reserved, or States have relinquished, exclusive jurisdiction to the United States. "Manage or protect" is a jurisdictional authority derived from Federal statute, international treaty, Indian treaty, Executive Order or similar directive. This latter jurisdiction may or may not be concurrent with that of States. Thus there may be both Federal and State trustees as well as more than one Federal trustee.

5. Interior's Trusteeship.

A. Natural resources under the Secretary's trust fall into three broad categories:

(1) Natural resources on, over or under lands owned by the United States and managed by the Department. Examples include resources in units of the National Park (NPS) and National Wildlife Refuge (FWS) systems, public lands (BLM) and other project lands and properties (all bureaus).

(2) Natural resources, not on lands described above, for which the Department has specific authority to manage or protect. Examples include mineral resources on the OCS (MMS); Federal minerals on private or non-Interior lands (BLM); water resources stored or regulated by Interior projects (BR); migratory birds and certain anadromous fish protected by international treaties (FWS); and certain endangered and threatened species and marine mammals protected by Federal statutes (FWS).

(3) Natural resources protected by treaty or other authority pertaining to Native American tribes or located on lands held by the United States in trust for Native American tribes, communities or individuals. Examples include natural resources on Indian reservations, village lands and allotments as well as certain off-reservation water, fishery and subsistence resources protected by treaty or statute (BIA).

B. The Secretary's trust under CERCLA does not extend to non-natural resources such as constructed facilities, man-made archeological or historical objects, or persons (or their remains). Nor are trust responsibilities interpreted to extend to natural resources where the Secretary's involvement: (1) is merely consultative or hortatory (e.g., Fish and Wildlife Coordination Act, National Historic Preservation Act); (2) is restricted to the regulation or cleanup of private actions on private lands (e.g., Surface Mining Control and Reclamation Act); (3) is limited to technical or financial assistance (e.g., Land and Water Conservation Fund, Abandoned Mine Land Fund, Historic Preservation Fund, Federal aid for fish and wildlife restoration); or (4) is related to broad data collection or research authorities (e.g., water, minerals, fish and wildlife data and research programs).

6. Natural Resources Surveys.

A. The purpose of a preliminary natural resources survey is to gather and analyze facts in order to determine whether sufficient cause exists to conduct a damage assessment and pursue a claim for damages to natural resources under the trusteeship of the Department. The principal facts to be gathered are whether any such resources are present in the vicinity of the incident or site and, if so, whether there are any damages to them from the incident or site.

B. Damages claimed under CERCLA must have occurred or be continuing after December 10, 1980, and any damage claims may not overlap response claims for cleanup activities conducted pursuant to the NCP. Thus, any natural resources damages claimed will usually be those residual damages after response (removal or remedial) actions have been completed. If there are uncertainties about timing or the extent of cleanup, they should be identified in the survey.

7. Initiation. Natural resources surveys may be initiated in the following situations:

A. Notification by the On-Scene Coordinator (OSC). Bureaus should, as a routine matter, consider whether there are any damages to natural resources when involved in NCP response activities. Generally, a natural resources survey should not be documented if no resources managed or protected by the Department are present. If resources under the jurisdiction of other bureaus are present the Regional Environmental Officer (REO) should be immediately informed to determine whether a Departmental survey should be initiated.

B. Sites on the National Priorities List (NPL). The Department, acting at the initiation of the Office of Environmental Project Review will conduct and document natural resources surveys at all sites on the NPL. A preliminary review of the NPL indicates that most of these sites will not involve Interior's trust responsibilities. These surveys will be scheduled over the next 2 - 3 years and will be conducted as a part of the Department's normal environmental review (ER) process managed by OEPR.

C. Enforcement Actions. On occasion the Department of Justice, Environmental Protection Agency (EPA), U.S. Coast Guard (USCG), or the Department's Solicitor may request that a natural resources survey be conducted to assist in other related enforcement or legal actions. These surveys include those provided for in the attached EPA/DOI Memorandum of Understanding (MOU) on this subject and will be managed by OEPR.

D. Other Natural Resources Trustees. On occasion, State or other Federal trustees may request the Department to conduct a survey to determine whether multiple trustee-ships are involved in an incident or site. Any such requests will be referred to the appropriate REO (in the case of a State trustee) or OEPR (in the case of another Federal trustee) and the survey will be managed by OEPR.

E. Bureau Initiative. There may be other situations not described above where bureaus may wish to conduct natural resources surveys at their own initiative to meet their own priorities. In these cases bureaus should provide copies of any documentation to the appropriate REO. If resources are involved under the jurisdiction of more than one bureau, OEPR may initiate a Departmental survey.

8. Procedure.

A. OEPR will distribute and control Departmental natural resources surveys through its existing ER process. Bureaus with a possible jurisdictional involvement will be designated and, where appropriate, bureaus with special expertise about resources near the incident or site will be identified to participate in the survey. OEPR's distribution memorandum will also establish schedules, contact points and signature authority.

B. Bureau survey comments will indicate whether Departmental trust resources are present and, if so, whether they are affected by oil spills or hazardous substance releases from the incident or site. The presence of such resources can usually be obtained from existing reference material (e.g., maps, deeds, records, reports, studies). Effects may already be documented in incident reports or bureau or EPA records. Where uncertainty exists about either the presence or effects on Interior resources, a field inspection and, in some cases, limited sampling and laboratory analyses may be necessary. Field visits and any data collection will be coordinated with the REO in order to share information and minimize expenses where possible. Bureaus are responsible for ensuring that field personnel are properly trained and aware of safety precautions when making field visits.

C. Based upon bureau input and its own review, OEPR will prepare a memorandum report of the Department's natural resources survey findings. Bureaus will be consulted if their input is substantively modified or challenged.

D. If a proposed report indicates that sufficient cause exists to initiate a damage assessment leading to a claim for damages to natural resources under the trusteeship of the Department, OEPR will consult with the Solicitor's Office.

9. Funding. The Assistant Secretary - Policy, Budget and Administration has established the following Departmental policies for funding natural resources surveys:

A. The routine conduct of natural resources surveys is considered to be a responsibility of the Department of the Interior and will be accommodated within its on-going mission and environmental review activities.

B. Where these surveys find that damages exist to resources under the Department's trust and that sufficient cause exists to proceed with a damage assessment, the costs of these surveys will be documented by bureaus and later included in the costs of conducting the damage assessment when presenting a damage claim and/or seeking reimbursement pursuant to CERCLA.

C. Where these surveys have been conducted at the request of EPA pursuant to our MOU on this subject, allowable costs will be reimbursed in accordance with procedures established in the next paragraph.

10. EPA/DOI MOU Reimbursement Procedures.

A. Reimbursable costs are limited to those allowable costs identified in the MOU.

B. Reimbursement for each survey is limited to those bureaus identified in each OEPR distribution memorandum.

C. Upon receipt of a distribution memorandum and prior to obligating any funds, bureau reviewing officials will contact the REO and receive verbal approval of their scope of work and estimated costs. They will also coordinate with the REO about any visits to EPA regional offices and any necessary field inspections in order to minimize costs and share data with the REO, other bureaus and EPA.

D. Within thirty (30) days of completion of a survey (measured from the date reviews are due to the REO), reviewing officials will submit a request for reimbursement (SF 1081) to the REO for approval and forwarding to OEPR. The SF 1081 must identify the survey ER# and need only itemize costs to the 2-digit object class.

E. Upon receipt by OEPR the SF 1081 will be forwarded to the Fiscal Division of the Office of Administrative Services for payment to the appropriate bureau office.

F. Bureaus will keep detailed financial accounts of all costs incurred on a site-specific basis. These accounts will include, at a minimum, employee hours spent, travel and per diem expenses, and any other costs and receipts in accordance with the accounting requirements specified in the MOU. Pursuant to Section 111(k) of CERCLA, these detailed financial accounts will be available foraudit by the Inspector General.

11. Limitations.

A. This memorandum provides practical information and guidance to bureaus conducting preliminary natural resources surveys as a part of the Department's responsibilities as a trustee of certain natural resources. It does not purport to give definite legal guidance on all of the complexities of CERCLA's definitions and provisions affecting natural resources trustees. The reader is referred to CERCLA itself, the Solicitor's Office and OEPR.

B. This memorandum does not provide instructions for the conduct of damage assessments. Responsibility for preparing regulations for the assessment of damages to natural resources has been assigned by E.O. 12316 to the Secretary of the Interior and in turn to OEPR. Pending promulgation of these regulations, bureaus should consult OEPR prior to initiating a damage assessment.

Bruce Blanchard
Director

Attachment (EPA/DOI MOU)

Memorandum of Understanding
Between
The Environmental Protection Agency
and
The Department of the Interior

PRELIMINARY SURVEYS OF DAMAGES TO NATURAL RESOURCES

1. Purpose

The Department of the Interior (DOI) and the Environmental Protection Agency (EPA) agree that this memorandum of understanding is necessary to coordinate and fund preliminary surveys of damages to natural resources that may be compensable under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 USC Section 9601 et seq. This memorandum establishes a mechanism for EPA's requesting and funding preliminary surveys by DOI of possible damages to natural resources for which DOI serves as trustee under Subpart G of the National Oil and Hazardous Substance Contingency Plan, 40 CFR Part 300 (47 FR 31180, July 16, 1982).

2. Authority

Section 107 of CERCLA imposes liability upon certain persons for costs of cleanup and for damages resulting from releases of hazardous substances into the environment. Pursuant to Section 107 and Executive Order 12316, EPA and DOI may seek to recover costs and damages from liable parties. EPA may seek costs associated with responding to releases; DOI may seek to recover for damages to natural resources which it holds in trusteeship for the United States. Section 111(c) allows Fund money to be used for costs of assessments of damages to natural resources.

3. Scope

Under this agreement, EPA will pay DOI to conduct preliminary surveys of damages to natural resources managed or protected by the United States, for which DOI serves as trustee, from releases of hazardous substances specified by EPA. These

surveys will assist EPA in reaching settlements with defendants in actions brought by EPA under CERCLA.

Under the authority of Sections 106 and 107 of CERCLA, EPA actively pursues the settlement of hazardous waste cases against persons responsible for releases. These settlements generally include, for the responsible parties, release from further enforcement actions under CERCLA with respect to the release of hazardous substances that is the subject of the settlement. EPA, however, cannot provide a release from liability for damages to natural resources. Such a release may only be granted by the trustee of the affected resources. DOI is therefore responsible for determining whether there exists a potential cause of action against responsible parties for damages to natural resources for the resources which it holds in trusteeship. Under this memorandum, DOI will conduct preliminary surveys of damages to natural resources and notify EPA whether or not DOI believes a potential cause of action exists. EPA will not include in any settlement agreements a release from liability for natural resources damages unless DOI has advised EPA that it believes no potential cause of action exists.

EPA's Office of Waste Programs Enforcement (OWPE) and DOI's Office of Environmental Project Review (OEPR) will serve as the agencies' contacts for issues related to this agreement.

4 Priorities

OWPE will be responsible for apprising OEPR, in writing, of hazardous waste sites for which preliminary surveys of potential natural resources damages may be necessary. EPA will develop and submit to DOI, in writing, a priorities list of specific sites needing preliminary surveys. EPA may amend, in writing, its priorities list of requested surveys periodically. DOI will plan to conduct preliminary surveys for the sites designated by EPA in the order which appears on the list.

5. Work Plan

OEPR will submit to OWPE a work plan detailing the scope of activity to be performed, the schedule for such activity, and the cost of each survey. The plan will be submitted to OWPE no later than ten (10) days after OWPE has delivered its priorities list to OEPR.

DOI will not commence any activity in the work plan until OWPE has notified OEPR, in writing, that the work plan is acceptable. OWPE's notification will state a maximum amount of reimbursement that will be allowed for each survey included in the work plan. DOI will not be entitled to reimbursement from EPA beyond the maximum specified by OWPE unless an amendment to the work plan is agreed upon, in writing, between OEPR and OWPE.

6. Schedule

DOI will normally complete a site-specific preliminary survey within sixty (60) days. If, during the course of a survey, DOI determines that it cannot complete it within sixty (60) days, OEPR shall notify OWPE, in writing, of the cause of delay and the estimated additional time that will be needed to complete it. OEPR should contact OWPE at least fifteen (15) days before the end of the initial sixty (60) day period if additional time is needed. By mutual agreement, EPA may request and DOI may conduct a preliminary survey on an expedited schedule.

7. Survey Procedures

After notification from EPA, DOI will conduct site-specific preliminary surveys for potential natural resources damages. DOI will conduct these surveys according to its own procedures and guidelines and the approved work plan. EPA will identify Regional and Headquarters contacts to provide DOI with information and assistance on site-specific surveys as needed. The contacts will be provided to OEPR in the original notification from OWPE.

8. Reports and Releases

Within ten (10) days of completion of each survey, OEPR shall submit to OWPE a report which includes a determination of whether potential natural resources damages exist and the basis for that conclusion.

Where a release from a potential cause of action for natural resources damages is appropriate, DOI's Office of the Solicitor will provide such release in the form of a letter addressed to the Department of Justice or EPA, whichever is appropriate.

9. Reimbursement

Reimbursement for the surveys will be allocated on a site-specific basis through an Inter-Agency Agreement (IAG). These allocations will be based on DOI's approved work plans and cost estimates, and will serve as DOI's budget for preliminary surveys.

DOI will be reimbursed for allowable costs incurred while conducting the preliminary surveys, as long as these costs were incurred in accordance with the work plan previously approved by OWPE. The following is a list of allowable costs which are reimbursable by the Fund:

a) Contractors and consulting costs

b) Lease or rental of equipment

c) Supplies, materials and equipment (including transportation costs) procured for a specific survey and expended during a survey

d) Use of DOI equipment including vehicles and fuel

e) DOI salaries, travel and per diem expenses directly related to a survey and not otherwise reimbursable by Superfund under any other agreement between DOI and EPA.

Reimbursement will not be made until a survey has been completed and OWPE has received the report referred to in paragraph 8 of this agreement.

10. Accounting Requirements

EPA, acting as manager of the Hazardous Substance Response Trust Fund, requires current information on CERCLA response actions and the related obligations of CERCLA funds for these actions. DOI will submit to EPA a request for reimbursement as specified in the IAG. Such request will include itemized accountings of all reimbursable costs incurred while conducting each survey.

DOI is required to keep detailed financial accounts of all costs incurred. These accounts should include, but are not limited to: employee hours spent; receipts for materials, equipment or supplies; travel and per diem expenses; and contract fees. All accounts shall be maintained on a site-specific basis. Detailed documentation on all preliminary survey costs must also be available for audit, verification or request of the Inspector General.

11. Period of Agreement

This memorandum shall continue in effect until modified or amended by the assent of both parties or terminated by either party upon a thirty (30) day advance written notice to the other party. This agreement will be reviewed at the time EPA promulgates procedures implementing Section 112 of CERCLA.

Assistant Administrator for
Solid Waste & Emergency Response
Environmental Protection Agency

Date: SEP 2 1983

Deputy Assistant Secretary -
Policy, Budget & Administration
Department of the Interior

Date: AUG 10 1983

IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

3046 (671)

Related to
IM 84-57,
84-57, Ch. 1

June 4, 1984

Instruction Memorandum No. 84-525
Expires 9/30/85

To: State Directors

From: Director

Subject: The Need to Seek Out Legal Assistance and to Notify Solicitor When Dealing with Hazardous Materials Issues

A few cases have come to light recently that indicate the need to provide advice to offices on dealing with hazardous waste incidents on or affecting public lands within their jurisdiction.

The basic Federal statutes regulating hazardous materials and wastes, the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) are complex and untested in many aspects. To complicate the situation further, there are a wide variety of State laws that because of provisions in RCRA and CERCLA have the full force and effect of Federal law as applied to Federal agencies. The Federal codes impose substantial civil and even criminal liabilities for failure to comply with Federal or authorized State law and these liabilities can apply to both the agency and the individuals involved.

Based on this rather complicated legal situation, we strongly recommend the following action in dealing with hazardous waste-related situations or incidents:

1. On discovering a new site of hazardous wastes or trespass dump site that is potentially hazardous, report it to the proper authorities using the procedures set forth in IM 84-57 and Change 1 to that memo.

2. If notified by the Environmental Protection Agency (EPA), a State agency, or a county that BLM is in noncompliance with a hazardous material or hazardous waste code, contact your Regional Solicitor's Office or Field Solicitor's Office. This applies to abatement or cleanup orders, or any similar action, notices of noncompliance or even verbal statements. Notify the Regional Solicitor and prepare a file on the situation for use by that office.

3. When dealing with a trespass dump site or a situation where a public land user is in noncompliance with BLM requirements and which involves or may involve hazardous materials, discuss the situation with your Regional Solicitor's Office or Field Solicitor's Office before issuing a notice of trespass or noncompliance.

4. When meeting with EPA, State agencies, etc., on specific hazardous waste sites, always notify the Regional Solicitor's Office or Field Solicitor's Office of the meeting and be prepared to brief their staff on the facts of the situation so that

they can attend the meeting with you. This protects both you and BLM from misunderstandings that can arise from lack of knowledge, subtle cross connections among laws, and adverse interpretations.

5. When in doubt about any legal aspects of hazardous materials management, contact your Regional Solicitor's Office or Field Solicitor's Office. The Hazardous Materials and Program Management Staff in the WO will also be available to assist State Offices in policy and technical issues. Please contact either Bernie Hyde (FTS 343-4493) or Bob Sulenski (FTS 343-5517) for such assistance and to report situations of the type discussed.

James M. Parker
Associate Director

IN REPLY REFER TO:
3046/1112 (671)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

Related to
Inst. Memo
84-57 and
Change 1

April 12, 1984

Instruction Memorandum No. 84-414
Expires 9/30/85

To: All Field Officials

From: Director

Subject: Safety Procedures at Incidentally Discovered Hazardous Materials Dump Sites

A. INTRODUCTION:

As you may know, spills, dumping, and other forms of contamination by hazardous materials are growing problems of national concern. The occurrence of such materials on the public lands is most often associated with Bureau authorized activities. Associated spills can occur anywhere, but are often associated with transportation or storage facilities. BLM lands are also being used for illegal dumping, and such activities are expected to continue and increase in the future.

Hazardous materials may be toxic, flammable, explosive, corrosive, combinations of these, or in other ways be injurious to life and health. The materials may be in drums, cylinders, canisters, sacks, or as uncontained materials such as piles of solids, pools of liquids, abandoned tailings ponds, or clouds of gases. Containers may or may not be ruptured and/or leaking.

In addition to these conspicuous types of evidence that hazardous materials have been spilled or dumped, it is very possible that a number of other indicators may signal the existence of hazardous materials. Such indicators include stressed vegetation or unusual lack thereof; dead or sick domestic stock, wildlife or birds; fish kills; or otherwise unexplained stream sterility or diminished species and numbers of aquatic flora and fauna; and unusual coloration or discoloration of the land surface. These indicators, however, are more ambiguous evidence of hazardous materials than the materials, liquids, or containers themselves.

This memorandum applies only to incidental discoveries arising from regular activities by BLM personnel. It should be distributed to all Field personnel. Discussion of these procedures at the earliest possible safety or employees' meeting is strongly recommended. Additionally, the IM should be considered in conjunction with IM No. 84-57 (and Change No. 1) on reporting of previously unknown, suspected hazardous materials sites or spills to the appropriate authorities. Guidance for safety in Field investigations of hazardous materials sites will be distributed in future Instructional Memoranda.

Remember, hazardous materials are called "hazardous" because they can pose the potential for grave immediate, future, and genetic injury, or illness when handled without proper equipment and precautions.

B. SAFETY:

1. When obvious indicators are present

On discovering any unauthorized waste dump or spill site that contains obvious indicators that potentially hazardous materials may be present (a number of drums or canisters, pools of unidentifiable liquids, piles of unknown solid materials not associated with an authorized activity, acrid odors, etc.) the following precautions should be carefully followed:

a. The first consideration of the employee making the discovery should be his or her personal safety. Treat an unidentifiable substance as hazardous. Do not presume that it is safe. A false alarm is preferable to an injury.

b. Move a safe distance away from the suspected spill, illegal dump site, or materials.

c. If there is smoke or vapor, stay upwind of the site if possible.

d. Do not handle the materials, breathe fumes, make contact with the material, or open or move the containers, if at all possible. Besides being injurious to the discoverer, toxic materials can be transported to co-workers, children, or pets on shoes or clothing.

e. Do not attempt to collect samples of unknown materials (toxics do not always look "dangerous") this is a job for specifically trained and properly equipped personnel from EPA, State agencies, or their contractors.

f. If contact with a suspected toxic, caustic, or corrosive material is made, the exposed person should seek medical assistance immediately. Emergency first aid should be administered if feasible. Report the exposure and the medical findings to the DM and/or Safety Officer.

g. All new employees in an Area or District should be made aware of local conditions that can increase risk in a situation of this nature (e.g., abandoned mine workings, "informal" dump areas, little used roads, dry washes, etc.)

2. When obvious indicators are not present

Some indicators of the presence of potentially hazardous materials are ambiguous. These include stressed or dead vegetation, sick or dead wildlife, livestock, etc. These conditions may be indicative of other problems such as flooding, toxic or diseased vegetation, poaching, natural contamination of streams by runoff or sediment, temperature changes, etc.

Where such ambiguous biological indicators exist on a site and where no other indicators of hazardous materials are in evidence, the site should be examined, taking necessary precautions, by personnel who have experience and training in biologic sciences (Wildlife Specialists, Range Conservationists, etc.), to determine if the problem stems from hazardous materials or some other cause.

If the cause can be readily determined to be hazardous materials, or if no other cause is readily discernible, the instructions given in B.1 of this memorandum should be followed. If the cause is identifiable as other than hazardous materials, further investigation should be initiated using the appropriate BLM guidelines and procedures.

C. PRELIMINARY SURVEY OF SUSPECTED HAZARDOUS WASTE SITES:

Without endangering personal health or safety, determine as many of the following items as possible, from a safe distance:

1. Nature of suspected material i.e., solid, liquid, color, odd appearance, etc.

2. Type or types of container, if any.

3. Evidence of leakage from the containers.

4. Approximate number of containers.

5. Company names, or any other potential identifying characteristics of containers, i.e., serial numbers, warning signs, etc. If not discernible from a safe distance, do not approach the materials.

6. Evidence of dead plants or animals around or near the site.

7. Location of the site as precisely as possible.

8. Photographs of site or materials if a camera is available.

9. Proximity to towns, cities or water supplies and/or threat to natural resources or public health.

D. REPORTING:

The person discovering a suspected site shall report the information to the Area or District Manager, as appropriate, and to the State Office Hazardous Waste Coordinator as soon as possible. Reporting the site to outside authorities will be carried out as set forth in Instruction Memorandum No. 84-57 and Change No. 1 to that memorandum.

Robert F. Burford

Robert F. Burford

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

June 26, 1984

Instruction Memorandum No. 84-556
Expires: 9/30/85

To: All State Directors

From: Director

Subject: Hazardous Waste Management Permit Procedures

The passage of the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and other laws dealing with the management of hazardous materials has a number of important impacts upon the BLM. We must implement these laws as expeditiously as possible, and it is strongly recommended that all managers become familiar with these laws and the EPA regulations that have been promulgated under their authorities.

The EPA regulations for the management of hazardous wastes (40 CFR Parts 122, 123, 124, 144, 145, 233, 270, and 271) require that persons storing, treating, or disposing of hazardous wastes first obtain Hazardous Waste Management Permits for each site involved in such operations. This requirement applies to both direct BLM activities and such activities by others on the public lands under any form of BLM authorization (e.g., leases, licenses, permits, claims, rights-of-way, etc.).

This requirement applies whether the activity involving the storage, treatment, or disposal of hazardous wastes is the sole and specific activity authorized by BLM (e.g., the disposal of hazardous wastes), or is in connection with, and part of, another authorized activity (e.g., disposal of hazardous waste generated in a mining or milling operation). The requirement for a permit applies equally to individuals, companies, partnerships, corporations, and governmental entities at the Federal, State and local levels.

The regulatory language of the RCRA uses the term "facility" to mean both the specific improvements constructed for the storage, treatment, or disposal of hazardous wastes, and the land upon which those improvements are situated.

For internal BLM purposes, we have divided this combined definition into two terms--(1) the physical plant which constitutes all improvements involved with the operation, and (2) the site which describes the actual land upon which the improvements are located.

The RCRA and its supporting hazardous waste management regulations place legal responsibility and liability on both the operators (i.e., the management of a physical plant for the storage, treatment, or disposal of hazardous wastes) and the actual owner of the land upon which the physical plant is located in those cases where the operator does not also own the land.

We anticipate that BLM's involvement in storage, treatment, or disposal will be as owner of the land (on behalf of the United States), rather than as operator. At this time, it is not BLM policy for the Bureau to maintain its own hazardous waste storage, treatment, or disposal sites or facilities, nor are we aware of any currently operated by the Bureau. Further consideration will be given to the matter if the need for such a facility is identified. The balance of this memorandum, therefore, is concerned primarily with those situations in which BLM authorizes another person or entity to operate such a facility on the public lands.

All activities authorized or conducted by BLM on the public lands, that have the potential for treating, storing, or disposing of hazardous materials must have the requisite EPA and State permits. The BLM as landowner has some responsibility to assure that proper permits are obtained. (Hazardous wastes are defined by EPA and by authorized States; if there is a question, consult the regional office of EPA.)

On September 1, 1983, the EPA published its final rulemaking for hazardous waste management permit procedures for Federal and federally authorized activities (Federal Register, Vol. 48, No. 171, pp. 39611-39623), a copy of which is enclosed. (See particularly Part 270.)

Among other things, the regulations require BLM to certify as landowner that any application for a permit for a hazardous waste storage, treatment, or disposal operation to be located on the public lands is true, accurate, and complete. This certification is delegated to the State Directors, but, as noted in part 270, cannot be delegated further. (See 40 CFR 270.11(d) for exact wording). Identical requirements exist for National Pollutant Discharge Elimination System Permits and Dredge or Fill (404) Program Permits, both under the Clean Water Act (see 40 CFR 122.22(d) and 233.6(d) respectively) and Underground Injection Control Program Permits under the Safe Drinking Water Act (see 40 CFR 144.32[d]).

In order to comply with the portions of the regulations regarding such certifications and reduce the potential for liability penalties and public criticism of the Bureau, the following procedures should be put in place by State Directors:

1. All State Office (SO) personnel involved in the application and certification processes should familiarize themselves with the laws and regulations pertaining to hazardous materials.

2. Establish early contact and continuing dialog with the appropriate Regional EPA and State offices managing the hazardous waste management program.

3. To make certain that the certification is correct, the State Director should assure himself that his office has a discreet system for evaluation of applications. This system should ensure that qualified personnel properly gather and evaluate the information to be submitted.

4. The certification requires the State Director to specifically inquire of the managers of the system, or the directly responsible technical personnel, that, to the knowledge of the manager or the technical person, the information is timely, accurate, and complete. To assure that the State Director can make this certification in good faith, each technical person and manager should include a memorandum stating that the evaluation was conducted and that the information submitted is, to the best of his or her knowledge, timely, accurate, and complete.

5. The State Director should be certain that the application file package contains the assurance from the technical person or manager before certification. If the State Director has any additional questions concerning the material in the file, he should contact the technical person or manager directly, have his questions answered, and make a record to that effect.

6. After certification is made and the operator obtains the permits, staff and managers should maintain a knowledge of pertinent regulations, permit conditions, and operation and facility conditions and compliance. The BLM could be held liable, under some circumstances, for the acts of authorized operators.

Establishing and adhering to these procedures will provide the groundwork for assuring the legality and credibility of the certification. Further guidance on these and related regulations will be forthcoming. Any questions should be addressed to Bernie Hyde (WO-671) FTS 343-5517.

James M. Parker
Associate Director

1 - Enclosure - Federal Register, Vol. 48, No. 171, pp. 39611-39623 (13 pp)

October 1, 1983 at the rates indicated in the table below.

List of Subjects in 39 CFR Part 10

Foreign relations.

Luxembourg International Express Mail

Custom designed service [1], up to and including—		On demand service [2], up to and including—	
Pounds	Rate	Pounds	Rate
1	$27.00	1	$19.00
2	28.50	2	21.50
3	32.50	3	24.50
4	35.70	4	27.70
5	38.60	5	30.60
6	41.50	6	33.50
7	44.40	7	36.40
8	47.30	8	39.30
9	50.20	9	42.20
10	53.10	10	45.10
11	56.00	11	48.00
12	58.90	12	50.90
13	61.80	13	53.80
14	64.70	14	56.70
15	67.60	15	59.60
16	70.50	16	62.50
17	73.40	17	65.40
18	76.30	18	68.30
19	79.20	19	71.20
20	82.10	20	74.10
21	85.00	21	77.00
22	87.92	22	79.92
23	90.60	23	82.60
24	93.70	24	85.70
25	96.60	25	88.60
26	99.50	26	91.50
27	102.10	27	94.40
28	105.30	28	97.30
29	108.20	29	100.20
30	111.10	30	103.10
31	114.00	31	106.00
32	116.90	32	108.90
33	119.80	33	111.80
34	122.70	34	114.70
35	125.60	35	117.60
36	128.50	36	120.50
37	131.40	37	123.40
38	134.30	38	126.30
39	137.20	39	129.20
40	140.10	40	132.10
41	142.00	41	135.00
42	145.90	42	137.90
43	148.80	43	140.80
44	151.70	44	143.70

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and international Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

MACAO INTERNATIONAL EXPRESS MAIL

Custom designed service [1], up to and including—		On demand service [2], up to and including—	
Pounds	Rate	Pounds	Rate
1	$20.00	1	$20.00
2	31.70	2	23.70
3	35.40	3	27.40
4	39.10	4	31.10
5	42.80	5	34.80
6	46.50	6	38.50
7	50.20	7	42.20
8	53.90	8	45.90
9	57.60	9	49.60
10	61.30	10	53.30
11	65.00	11	57.00
12	68.70	12	60.70
13	72.40	13	64.40
14	76.10	14	68.10
15	79.80	15	71.80
16	83.50	16	75.50
17	87.20	17	79.20
18	90.90	18	82.90
19	94.60	19	86.60
20	98.30	20	90.30

MACAO INTERNATIONAL EXPRESS MAIL—Continued

Custom designed service [1], up to and including—		On demand service [2], up to and including—	
Pounds	Rate	Pounds	Rate
21	102.00	21	94.00
22	105.70	22	97.70
23	109.40	23	101.40
24	113.10	24	105.10
25	116.80	25	108.80
26	120.50	26	112.50
27	124.20	27	116.20
28	127.90	28	119.90
29	131.60	29	123.60
30	135.30	30	127.30
31	139.00	31	131.00
32	142.70	32	134.70
33	146.40	33	138.40
34	150.10	34	142.10
35	153.80	35	145.80
36	157.50	36	149.50
37	161.20	37	153.20
38	164.90	38	156.90
39	168.60	39	160.60
40	172.30	40	164.30
41	176.00	41	168.00
42	179.70	42	171.70
43	183.40	43	175.40
44	187.10	44	179.10

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and international Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

SWEDEN INTERNATIONAL EXPRESS MAIL

Custom designed service [1], up to and including—		On demand service [2], up to and including—	
Pounds	Rate	Pounds	Rate
1	$28.00	1	$20.00
2	31.70	2	23.70
3	35.40	3	27.40
4	39.10	4	31.10
5	42.80	5	34.80
6	46.50	6	38.50
7	50.20	7	42.20
8	53.90	8	45.90
9	57.60	9	49.60
10	61.30	10	53.30
11	65.00	11	57.00
12	68.70	12	60.70
13	72.40	13	64.40
14	76.10	14	68.10
15	79.80	15	71.80
16	83.50	16	75.50
17	87.20	17	79.20
18	90.90	18	82.90
19	94.60	19	86.60
20	98.30	20	90.30
21	102.00	21	94.00
22	105.70	22	97.70
23	109.40	23	101.40
24	113.10	24	105.10
25	116.80	25	108.80
26	120.50	26	112.50
27	124.20	27	116.20
28	127.90	28	119.90
29	131.60	29	123.60
30	135.30	30	127.30
31	139.00	31	131.00
32	142.70	32	134.70
33	146.40	33	138.40
34	150.10	34	142.10
35	153.80	35	145.80
36	157.50	36	149.50
37	161.20	37	153.20
38	164.90	38	156.90
39	168.60	39	160.60
40	172.30	40	164.30
41	176.00	41	168.00
42	179.70	42	171.70
43	183.40	43	175.40
44	187.10	44	179.10

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and international Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the Federal Register as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

(39 U.S.C. 401, 404, 407)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 83-24018 Filed 8-31-83; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, 144, 145, 233, 270, and 271

[OW-FRL-2372-8]

Permit Regulations; Revision in Accordance with Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is today promulgating revisions to regulations governing the following EPA permit programs: the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (CWA), Underground Injection Control (UIC) under the Safe Drinking Water Act (SDWA), the State "dredge or fill" (404) program under Section 404 of the CWA, and the Hazardous Waste Management (HWM) permit program under the Resource Conservation and Recovery Act (RCRA). The rules promulgated today cover a number of issues affecting these permit programs and are the result of a settlement agreement between EPA and industry petitioners.

On November 16, 1981, EPA entered into a settlement agreement with numerous industry petitioners in the consolidated permit regulations litigation (*NRDC* v. *EPA* and consolidated cases, No. 80-1607 [D.C. Cir., filed June 2, 1980]). On June 14, 1982, EPA published proposed rules which implemented the settlement agreement concerning the "common issues" affecting the NPDES, UIC, 404, and RCRA permit programs as well as several proposed rules affecting the NPDES permit program only (47 FR 25546). The final rules promulgated today address the concerns of the commenters to the proposed rules.

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DATE: These regulations shall become effective September 1, 1983. For purposes of judicial review under the Clean Water Act, these regulations will be considered issued at 1:00 p.m. eastern time on September 15, 1983; see 45 FR 26894, April 22, 1980. In order to assist EPA to correct typographical errors, incorrect cross-references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulations may be submitted on or before November 1, 1983. The effective date of these regulations will not be delayed by consideration of such comments.

ADDRESS: Comments of a technical and nonsubstantive nature should be addressed to: Cathy O'Connell, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D. C. 20460.

FOR FURTHER INFORMATION CONTACT: Cathy O'Connell, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D. C. 20460. (202) 426-2970.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 7, 1979, EPA published final regulations establishing program requirements and procedures for the NPDES permit program. Shortly thereafter, on June 14, 1979, a number of petitioners representing major industrial trade associations, several of their member companies, and the Natural Resources Defense Council (NRDC) filed petitions for review of the regulations. Also on June 14, 1979, EPA published proposed regulations consolidating the requirements and procedures for five EPA permit programs, including the NPDES program under the Clean Water Act (CWA), the UIC program under the Safe Drinking Water Act (SDWA), State "dredge or fill" programs under Section 404 of the CWA, the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act (CAA). Final Consolidated Permit Regulations were published on May 19, 1980. Again, these regulations were challenged in court. Petitions for review were filed in several Courts of Appeal and subsequently consolidated in the District of Columbia Circuit (*NRDC v. EPA*, and consolidated cases [No. 80-1607]). EPA held extensive discussions on all issues raised in the petitions and subsequently signed four separate settlement agreements with industry litigants. One covered only the UIC program, one all issues affecting the RCRA program, one the NPDES program, and the fourth covered issues which were common to at least two of the three programs involved in the litigation and issues which affect the definition of "new discharger" and its relationship to mobile drilling rigs under the NPDES program. Under the terms of the fourth agreement, referred to as the "Common Issues" settlement agreement, EPA published proposed rules on June 14, 1982. The final rules promulgated today reflect the intent of the "Common Issues" settlement agreement and address public comments received concerning the June 14, 1982, proposed revisions.

Several of the comments made on the proposed regulations were received from companies or organizations who were signatories to either the "Common Issues" settlement agreement or one of the settlement agreements specific to an EPA permit program.

Signatories to those settlement agreements generally agreed that to the extent EPA promulgated final regulations and preamble language which were substantially the same as and did not alter the meaning of language agreed to in the settlement agreements, the parties would drop their challenges to the regulations. Nonetheless, EPA did receive comments from signatories to the settlement agreement which requested further changes to the regulations than those agreed upon in the settlement agreements. In responding to the comments made, EPA in no way waives its right to require that signatories to the settlement agreements be held to those agreements, and in fact, expects good faith adherence to their terms.

Following the common preamble are five separate sections of regulatory language: Parts 122 and 123 covering the NPDES program; Parts 144 and 145 covering the UIC program; Part 233 covering the State "dredge or fill" programs under Section 404 of the CWA, Parts 270 and 271 covering the hazardous waste program under RCRA; and, Part 124, which covers the procedures for issuing, denying, modifying, revoking and reissuing, or terminating EPA-issued NPDES, UIC, 404, RCRA, and PSD permits.

The revisions implementing the "Common Issues" settlement agreement are presented in this manner to reflect the deconsolidation of these programs undertaken as part of the regulatory reform efforts of the President's Task Force on Regulatory Relief. In a final rule published in the Federal Register on April 1, 1983, 47 FR 14146, EPA "deconsolidated" what was formerly referred to as the Consolidated Permit Regulations. In that rule the Agency reorganized its presentation of several permit program requirements. While the rulemaking made no substantive changes to any of the regulations of the affected programs, it did result in a renumbering of several sections. Section numbers used in today's rulemaking are the new numbers published in that deconsolidation rulemaking. In the preamble each major section heading is followed by the section references for the NPDES, UIC, 404, and RCRA permit programs in that order. A separate section covering only NPDES issues is also included.

II. Common Issues

A. Signatories To Permit Applications and Reports (§ 122.22, § 144.32, § 233.6, § 270.11)

The May 19, 1980 permit regulations required permit applications submitted by corporations to be signed by a "principal executive officer of at least the level of vice president." Further, the regulations required that such officer had to personally examine the application and certify its truth, accuracy, and completeness based on an inquiry of those individuals who gathered the permit information.

1. *Level of Signer*

Today's revision, which is identical to the June 14, 1982 proposal, changes this requirement to allow permit applications to be signed by "a responsible corporate officer." This definition incorporates into the regulation EPA's interpretation of "executive officer of the level of vice president" adopted in a previously published policy statement (45 FR 562149, August 5, 1980). That statement clarified that an officer performing "policy-making functions" similar to those performed by a corporate vice-president could sign permit applications. The revision also allows the manager of one or more manufacturing, production, or operating facilities of a corporation to qualify as "a responsible corporate officer" if the facilities employ more than 250 persons or have gross national sales or expenditures exceeding $25 million, as long as the manager has been delegated the authority to sign permit applications in accordance with corporate procedures.

Several commenters questioned the rationale which EPA used to arrive at the 250 persons or $25 million criteria. These commenters argued that the criteria could be lowered (for example one commenter advocated a 100 persons

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or $10 million criteria) without adversely affecting the company's concern and responsibility for compliance with environmental laws. Other commenters advocated language which would allow the corporation's "environmental officer" to sign permit applications without the restrictions on the size of the work force or the monetary transactions of the corporation.

EPA's goal in establishing the "signatory" requirement was to ensure high level corporate knowledge of a corporation's pollution control operations. In revising the signatory requirement in accordance with the language promulgated in today's rule, EPA recognized that some relief could be granted without compromising that goal. The intent of today's change is to provide relief from the economic and administrative burdens of having a corporation's top executive officers personally sign and be familiar with numerous permit applications for all its operations. Such problems are generally experienced by large corporations with facilities and operations spanning wide geographic areas. The cut-off criteria chosen by EPA will ensure that those plant managers who are authorized to sign permit applications have sufficient authority to direct the affairs of their facilities.

EPA does not agree with the comment which suggests that any "environmental manager" of a corporation be allowed to sign permit applications. It is not the intent of EPA's signatory requirement to designate field supervisors or facility operators to sign permit applications simply because they are located at or near the facility. They may have no ability to direct the activities of the corporation so as to ensure that necessary systems are established or actions taken to gather complete and accurate information. Rather, the signatory provision, as explained above, ensures involvement in the permit process by individuals authorized to make management decisions which govern the operation of the regulated facility. An "environmental manager" may not have sufficient responsibility and authority to direct corporate activities which guarantee that all necessary actions are taken to prepare a complete and accurate application. Of course, in cases where an "environmental officer" is an environmental vice president or comparable "responsible corporate officer" within the definition of today's rule, he would be authorized to sign permit applications.

2. *Certification*

The revisions also change the certification language which required the signer of the form to have personally examined and be familiar with all the information submitted with the permit application. Under the new certification language promulgated today, the person signing the form (the signer) must have some form of direction or supervision over the persons gathering the data and preparing the form (the preparers), although the signer need not personally nor directly supervise these activities. The signer need not be in the same corporate line of authority as the preparers, nor do the persons gathering the data and preparing the form need to be company employees (e.g., outside contractors can be used). It is sufficient that the signer has authority to assure that the necessary actions are taken to prepare a complete and accurate application form.

None of the comments received objected to the proposed change in the certification language; thus, it is unchanged from the proposed language. EPA believes this change will assure an adequate level of corporate involvement and responsibility in the permit application process while eliminating the requirement of personal examination by the signer of all information submitted with the permit application.

The immediate implementation of today's certification language in permit application and reporting forms is infeasible. Because many States and EPA regional offices have large supplies of existing forms which contain the old certification language, it is both administratively and economically impractical to immediately convert to forms containing today's certification language. Therefore, permit application and reporting forms which contain the old signatory language will continue to be used until all have been used up or until provision can be made to replace the forms with new ones containing today's signatory language. However, in order to allow permittees to use the new certification language prior to publication of new forms, the signer may cross out the old language and insert today's language. States and regional offices may also wish to prepare an addendum to permit application and reporting forms which contains the new signatory language.

It should be noted that the HWM program has proposed amendments to § 270.11(d) (formerly § 122.6(d)) which contain additional procedures for owners and operators of HWM facilities (see 47 FR 15304, April 8, 1982 and 47 FR 32038, July 23, 1982).

3. *Governmental Agencies*

Under the June 14 proposal, EPA solicited comments on whether the signatory requirement for public agencies should be amended. The U.S. Departments of the Interior and Agriculture objected to the retention of this signatory provision for Federal agencies, arguing that they are situated similarly to large private corporations and should be allowed the same "relief" as private corporations.

EPA believes that Federal officials responsible for agency operations covering widespread geographical or organizational units (similar to the Federal Regional Offices of many agencies) do experience problems similar to those of large private corporations and thus should also be entitled to relief. Where a Federal official has policy or decisionmaking authority for facilities under his widespread jurisdiction comparable to that of a "responsible corporate officer," that official would be authorized to sign permit applications.

Thus, under today's change a principal executive officer authorized to sign permit applications for a Federal agency will include the agency's chief executive officer and any senior executive officer having responsibility for the overall operations of a major geographic unit of the agency.

The intent of this change is to authorize senior agency officials comparable to EPA's own Regional Administrators to sign permit applications. Considering the information submitted by the two Federal agencies which commented on this regulation, EPA recognizes the State Directors of the Bureau of Land Management as the requisite level of authority intended in the federal signatory provision. In the case of the Forest Service, the Regional Forester would be the appropriate level for signatory authority. EPA does not consider the 122 Forest Supervisors of the Forest Service to have the required level of authority intended by today's change.

EPA does not believe that public notice and comment need be extended on the issue of the appropriate signatory level for Federal agencies. Comments were specifically solicited on the issue of providing relief to Federal agencies similar to that provided to private corporations. The comments received convinced EPA that such a change for Federal agencies is warranted.

EPA does not believe that the problem cited by industry petitioners and Federal agencies, namely the inconvenience of having a corporation's vice-president or Federal agency head personally sign and be familiar with each and every permit application covering a

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corporation's or agency's numerous, far-flung operations across the country, is analogous to municipal and State operations. In the case of cities, even large cities, there are a limited number of permitted operations for which a "principal executive officer or ranking elected official" would need to be personally responsible. States also would have far fewer permit applications to deal with than a large corporation or Federal agency.

B. Duty To Mitigate (§ 122.41(d), § 233.7(d), § 270.30(d))

The May 19, 1980 permit regulations included a standard permit condition which required permittees to "take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance" with NPDES, UIC, 404 or RCRA permits. Industry petitioners feared this language could be interpreted to imply that this provision imposed an obligation to assume liability for medical costs for persons harmed by the results of noncompliance. EPA made clear in the preamble to the proposed revisions published on June 14, 1982 that this was not the intent of this provision. In addition, EPA proposed that the regulatory language be amended. In the case of NPDES and State 404 "dredge or fill" permits, the June 14 proposal focused on the permittee's obligations to "minimize or prevent" noncomplying discharges which have "a reasonable likelihood of adversely affecting human health or the environment." Under the proposed revisions, RCRA permittees would be required in the event of noncompliance to "take all reasonable steps to minimize releases to the environment" and to "carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment." No change to the May 19, 1980, provision was proposed for UIC permittees.

Many commenters expressed dissatisfaction with the revised language as written, citing the difficulty to enforce the provisions because the language is broad. In addition, commenters expressed dissatisfaction because the proposed language does not explicitly note that liability for medical costs for persons harmed as a result of noncompliance is not intended by these provisions.

EPA does not agree that the language of the provisions is so broad as to be unenforceable. The provisions clearly establish the principle that every permittee is responsible for compliance with his permit and is required to take mitigation measures when noncompliance with the permit presents a risk of environmental harm. EPA also disagrees that the issue of liability for medical costs need be explicitly incorporated in the regulatory language covering a permittee's duty to mitigate. The fact that medical liability is not intended by this provision has been noted several times in the rulemaking proposals and EPA believes that this explanation is sufficient.

A few commenters objected to the retention of the requirement "to minimize or correct any adverse impact resulting from noncompliance" for UIC permittees. They argued that the UIC program should be consistent with the duty to mitigate provisions adopted for the NPDES, State 404 "dredge or fill," and RCRA programs.

The June 14, 1982 rulemaking proposal on the "Duty to Mitigate" provision explained that EPA was not proposing to change this provision for purposes of the UIC program and, therefore, was not opening it up to public comment. Industry UIC petitioners withdrew their challenge to § 122.7(d) as part of the UIC settlement agreement. Accordingly, as EPA is adopting the proposed amendments to the NPDES, 404, and HWM programs in final form, the existing text of that section has been redesignated as § 144.51(d), applicable to UIC only.

C. Other Federal Statutes (§ 122.49, § 144.4, § 270.3)

The May 19, 1980 permit regulations listed a number of Federal statutes which may be applicable to the issuance of NPDES, UIC, or RCRA permits. The introductory paragraph to this provision stated that permits would be issued in a manner and contain conditions consistent with the requirements of the applicable Federal laws. In the proposed revision to this provision, EPA rewrote the introductory paragraph to make it clear that the Agency does not intend to condition or deny permits based on those statutes when such action is not appropriate under the statutes. Today's rule promulgates this introductory language unchanged from the proposal.

Those individuals and organizations which submitted comments on the rewritten introductory paragraph either interpreted it to mean that no permits would ever be conditioned or denied under the National Environmental Policy Act (NEPA) or other Federal statutes or that all permits must be conditioned by these Federal statutes. Neither of these results is intended by this provision. The principal purpose of this provision as promulgated today is to notify permit issuers of requirements that already exist and which may be applicable to particular permits. If other Federal statutes require action on the part of EPA in issuing permits, EPA will comply with the requirements of these statutes and will condition or deny permits accordingly.

Of course, in deciding to condition or deny a permit on the basis of an applicable Federal statute, it is not necessary that the Federal Statute explicitly require the condition or denial. For example, NEPA does not mandate that EPA deny an NPDES permit under the CWA in any particular circumstance, nor does it state how a permit must be conditioned. Nonetheless, EPA, in carrying out its responsibilities under NEPA for a comprehensive evaluation of a proposed action, may determine that denial of a permit in a given case is appropriate or that conditioning the permittee's discharge in some way is justified by the findings in an environmental impact statement (EIS). Today's rule does not alter EPA's responsibilities under other Federal statutes.

D. Continuation of Expired Federal Permits in Approved States (§ 270.51)

The May 19, 1980 permit regulations provide that if an EPA-issued permit expires in a State that has been approved as the permit-issuing authority, the permit does not continue in force unless State law explicitly authorizes such a continuation. If no such State provision exists, the facility is considered to be operating without a permit and is subject to enforcement action. Where EPA is the permit issuing agency, the Administrative procedure Act [5 U.S.C. 558(c)] automatically extends the permit until EPA acts on the permit renewal application if the applicant has submitted a timely and complete application prior to the expiration of the permit.

Industry petitioners requested that the regulations be amended to allow an EPA-issued permit, which expires in a State approved to administer the NPDES or RCRA program, to continue in force, irrespective of the provisions of State law, until the State reissues or denies the permit.

In the June 14, 1982 proposal EPA stated that although it cannot provide for the automatic continuation of Federally-issued NPDES permits upon approval of a State program, the Agency would adopt the following policy. If a State NPDES program has been approved, expired Federally issued permits do not remain in effect unless continued under State law. However, if the discharger, owner, or operator has submitted a timely and complete application for a renewal permit to the

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State, and the State has not acted, EPA would refrain from initiating an enforcement action based on the applicant's failure to have a permit if the applicant continues to comply with the terms of the expired permit, unless the permitted activity presents an imminent and substantial endangerment to the environment or human health.

EPA recognized that this NPDES policy would not, nor could it, provide certain protection from citizen suits against facilities without required permits. However, in these circumstances, EPA would not expect a court to assess penalties if delays in permit reissuance were not due to failure of the facility owner or operator to submit required information. No adverse comments were received on this policy, thus today's policy is adopted as proposed.

In addition to the above policy, EPA proposed revisions to allow for the continuation of RCRA permits should the need arise. The proposed revision provided for automatic extension of EPA-issued RCRA permits, even after approval of State permit-issuing authority. No objections were raised to this change in the RCRA permit program, thus today's rule is promulgated as proposed.

Several commenters felt that an Agency enforcement policy similar to that provided for NPDES should be extended to the UIC program. The need for this policy has not been demonstrated with respect to the UIC program because no Federal program has been established as yet and, thus, no Federally-issued permits exist. UIC permits generally will be issued for a term of 10 years for Class I and V wells, and for the life of the facility for Class II and III wells. Given the anticipated duration of UIC permits, and the absence of a Federal UIC program, EPA does not feel it is necessary to extend this policy to the UIC program.

E. State Adoption of EPA Civil Penalty Policy (§ 123.27, § 145.13, § 233.28, § 271.16)

The May 19, 1980 permit regulations required that States adopt specific methods for calculating civil penalties. EPA proposed that the regulation delete specification of the methods for calculating penalties and require only that any civil penalty agreed upon by the State Director be "appropriate to the violation." A note explained that, to the extent the penalties assessed by the State are in amounts substantially inadequate in comparison to amounts EPA would have sought under certain facts, EPA may exercise its authority, when authorized by applicable statute, to initiate its own action for assessment of penalties. No objections to this proposal were received, thus today's rule is promulgated as proposed.

Two commenters, both parties to the Common Issues settlement agreement, noted that the proposed change to the note explaining the requirement for State adoption of EPA's Civil Penalty Policy did not contain the entire text of the language agreed to in the settlement agreement. The language referred to by these commenters was part of the existing regulation and explains various enforcement options available to the States. These enforcement remedies are not mandatory but are highly recommended. The omission of this language was unintentional. The note now contains the entire text.

F. Commencement of Operations Pending Hearing an Appeal (§ 124.60, § 124.119)

Section 124.60 governed the circumstances under which a new source, a new discharger, or a recommencing discharger, whose initial permit has been challenged in a formal hearing, may begin operations pending the outcome of the hearing. The proposed revision established more flexible measures by which the Presiding Officer might grant an "early operation order" which, nonetheless, maintains an adequate degree of environmental protection pending "final agency action" on a permit. Under the proposal the Presiding Officer would be authorized, when granting an early operation order, to impose conditions, in lieu of the conditions set by EPA, to maintain an adequate degree of environmental protection. These conditions could be permit conditions under administrative review, or could be more or less stringent requirements. In addition, a new section, applicable only to NPDES permittees, was proposed which would extend the same procedures for "early operation orders" to non-adversary panel hearings for sources covered by an individual permit. Another section, also applicable to NPDES permittees only, was proposed which would establish a special procedure applicable to mobile drilling rigs excluded from the "new discharger" classification.

The modification to these sections apply to RCRA permits in very limited circumstances. These sections apply to a RCRA permit only to the extent it has been consolidated with an NPDES permit in a formal hearing. No early operation or construction orders are allowed for RCRA permits that are not consolidated with a NPDES permit. Formal hearings are only available for the termination of RCRA permits unless the RCRA permit has been consolidated with an NPDES permit.

Some commenters objected to the language stating that the early operation order must be granted if "no party opposes." These commenters argued that the granting of an early operation order should be discretionary, not mandatory, especially in circumstances where the public is not a party to the proceedings and thus cannot object.

EPA believes it is appropriate to require an "early operation order" to be granted if no party objects to the order, particularly since permit appeals may create significant delays in final permit issuance. It should be noted that in any hearing, EPA itself is a party which can oppose the granting of an early operation order. Thus, the lack of a third party to the hearing does not guarantee that such orders will automatically be granted in cases in which only the permittee has challenged the permit.

An early operation order can be granted if the source or facility makes a three-part showing, that it is likely to receive a permit to operate, that the environment will not be irreparably harmed, and that discharge or operation pending final agency action is in the public interest. One commenter urged EPA to clarify the demonstrations necessary for orders authorizing construction of RCRA facilities saying that the demonstrations listed seemed to apply only to the NPDES program. All demonstrations required for an early operation order must be met by both NPDES and RCRA permittees prior to the issuance of such an order, whether the order is authorizing discharge in the case of NPDES or construction or operation in the case of RCRA permits. The words "construct/construction" have been added to § 124.60(a)(2)(i)–(iii) to make clear that such orders may authorize either construction or operation in the case of RCRA permits. In connection with this, EPA has dropped the last sentence of proposed § 124.60(a)(3). That sentence merely explained that where no party has challenged a construction-related permit term or condition of a RCRA permit, the Presiding Officer shall follow the requirements of § 124.60(a)(2) in granting an order authorizing construction. Since the language "construction/construction" has been added to § 124.60(a)(2) the second sentence to § 24.60(a)(3) is redundant and no longer necessary. Of course, no order may authorize construction if a construction-related RCRA permit condition has been challenged.

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In the case of non-adversary panel hearings, it was argued that permittees covered by general permits should be allowed the same opportunity to obtain an "early operation order" as those provided for permittees covered by individual permits.

EPA feels that "early operation orders" are not appropriate in the case of general permits. Because general permits can authorize entire classes or categories of discharge, EPA believes that full administrative action, including the issuance of a final permit, should be completed before an early operation order is allowed.

One commenter argued that any contested conditions of a permit undergoing administrative review should be unenforceable. Another commenter objected to the proposal which would allow contested conditions to be unenforceable pending the outcome of the hearing or subsequent appeal; this commenter believed that all conditions of the permit, including contested conditions, should be enforceable while the permit is undergoing review.

EPA has previously explained its position for staying contested permit conditions pending the completion of agency administrative review, 45 FR 33414. In order to grant some relief to dischargers who are without a permit pending final Agency action, "early operation orders" under this section were authorized. Authorizing an early operation is thus a special privilege. Since the Presiding Officer must assure that any order granted provides adequate protection of the environment during the administrative review process, he needs broad discretion to impose appropriate conditions (even more stringent than the proposed permit, if necessary).

III. NPDES Issues

A. Need To Halt or Reduce Activity Not a Defense (§ 122.41(c))

Under the May 19, 1980 permit regulations a permittee's obligation to halt or reduce activity in order to maintain compliance with the conditions of its permit was addressed in two separate provisions. Section 122.7(c) of these regulations explained that it was not a defense to an enforcement action that it was necessary to halt or reduce the permitted activity to maintain compliance. In addition, § 122.60(b) required that upon reduction, loss, or failure of the treatment facility, a permittee, in order to maintain compliance with its permit limitations, must control production on all discharges or both until treatment is restored.

Industry litigants argued that, in some cases, a mandatory obligation to cease or reduce operation or discharges would be unreasonable. For example, the requirement to halt production was particularly troublesome to the electric utilities industry, which is required under some State laws to provide a continuous reliable supply of electric power. EPA agreed that the appropriateness of controlling production or discharge may vary with the situation and thus, is more suitably dealt with as a question of defense to liability in enforcement proceedings.

In order to carry out this intent EPA made changes to both of the provisions cited above. On April 5, 1982, 47 FR 15304, in a technical amendment to the regulations, EPA revised the caption of § 122.7(c) "Duty to Halt or Reduce Activity" to "Need to Halt or Reduce not a Defense," to clarify the intent of that section that a permittee will not be allowed to defend its noncompliance in an enforcement action on the ground that it would have had to halt or reduce its regulated activity.

In addition, the Agency determined that § 122.7(c) adequately addressed its intent with respect to this issue and that § 122.60(b) was therefore redundant and unnecessary. On June 14, 1982, 47 FR 25550, the Agency proposed to delete section 122.60(b) in its entirety.

Following the technical amendment of § 122.7(c) and the proposed deletion of § 122.60(b), the Agency on April 1, 1983 deconsolidated the May 19, 1980 regulations, 47 FR 14146. In deconsolidating the May 19, 1980 regulations the Agency made no substantive changes; it merely reformatted and renumbered the regulations. In this process then existing §§ 122.7(c) and 122.60(b) were combined and renumbered § 122.41(c). The combination of these sections did not affect EPA's June 14, 1982 proposal to delete then § 122.60(b), currently found in the second and third sentences of § 122.41(c) of the April 1, 1983 regulations. Having received no comments adverse to deleting this provision, today's rule makes final the proposed deletion.

One commenter did point out what appeared to be a discrepancy between the preamble of the June 14, 1982 proposed revisions and the proposed amendment to § 122.60(b). The preamble stated that § 122.60(b) was to be deleted in its entirety. Yet the proposed rulemaking included a § 122.60(b) which concerned a permittee's duty to mitigate adverse impacts resulting from permit violations. In the June 14, 1982 rulemaking EPA did in fact propose to delete then § 122.60(b) of the May 19, 1980 regulations. Because deletion of this section left an opening at § 122.60(b), EPA then proposed to move § 122.7(d) the Duty to Mitigate provision of the May 19, 1980 regulations, to this section, renumbering it new § 122.60(b). That section was subsequently redesignated § 122.41(d) by the April 1, 1983 deconsolidation rulemaking. Consistent with the proposed regulation changes, today's final rules delete the second and third sentence of § 122.41(c) of the April 1, 1983 regulations. The first sentence of this section remains in effect. Final rules affecting § 122.41(d) are explained elsewhere in today's rulemaking.

B. New Discharger Issues (§§ 122.2, 122.29)

Determining Date

Today's rules make two changes to the definition of "new discharger." The first would change the determining date for the application of the "new discharger" classification. Under the present definition, a "new discharger" is any source which is not a "new source," and which discharges pollutants on or after October 18, 1972 from a site for which it has never received a finally effective NPDES permit. The determining date of October 18, 1972 was tied to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500).

Industry petitioners argued that with the creation of the "new discharger" category on June 7, 1979, a new classification potentially subject to more stringent requirements was applied to many sources that had been in operation for years, but had not as yet received NPDES permits, though applications had been filed. In order to prevent this result the Agency proposed to revise the definition to change the triggering date to August 13, 1979, the effective date of the first NPDES regulations defining the "new discharger" classification. EPA received no comments opposed to this change; thus today's rule is promulgated as proposed.

Mobile Drilling Rigs

The definition of "new discharger" in then existing § 122.3 (currently § 122.2) specifically included mobile drilling rigs. Thus, each time a mobile drilling rig moved to a new unpermitted site, for which it is required to apply for a new NPDES permit, it was subjected once again to the new discharger requirements. The June 14, 1982 rulemaking proposed two major changes

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to the regulations to address this problem. First, the proposed regulatory amendments established a general permitting scheme for oil and gas operations within the Outer Continental Shelf (OCS). The Agency's experience with the issuance of general permits for drilling operations in OCS lease sale areas in the Gulf of Mexico and off the coast of Southern California has been favorable and the use of general permits appears appropriate for other OCS areas. Therefore, section 122.28 (§ 122.59 of the May 19, 1980 regulations) was proposed to be amended to require EPA Regional Administrators to issue general permits for most discharges from oil and gas exploration and production facilities unless the use of a general permit is demonstrated to be clearly inappropriate. Second, because it will take some time before EPA can issue general permits for oil and gas facilities in all OCS lease sale areas, and because NPDES-approved States are not required to issue permits to oil and gas facilities in all OCS lease sale areas, EPA proposed to exclude mobile drilling rigs from the definition of "new discharger." The proposed exclusion covered all mobile exploratory drilling rigs operating in both offshore and coastal areas, and mobile developmental rigs operating in coastal areas. Mobile developmental rigs operating in any offshore area would continue to be included in the "new discharger" category.

Several commenters argued that developmental drilling rigs operating in offshore areas should not be included in the "new discharger" category. EPA has substantial reasons for treating developmental rigs operating offshore differently. Developmental rigs generally remain at a given site for longer periods of time than do exploratory rigs and have more advance notice before moving to new sites. Thus, the burdens of obtaining a new permit prior to moving to a new site are not as great as for exploratory rigs.

More importantly, developmental rigs pose more risk of harm to the marine environment than exploratory rigs. The volume of pollutants discharged by a developmental rig can be far greater than that from exploratory rigs, and movement to a new site could indeed constitute a significant new environmental harm. Although this is true for developmental activities in both coastal and offshore areas, EPA has an added responsibility under guidelines issued pursuant to section 403(c) of the Clean Water Act to consider the impact of discharges from offshore facilities on the marine environment. Section 403(c) is not applicable to discharges into coastal areas. In light of the increased volume of pollutants potentially discharged during developmental operations, EPA must often perform complex analyses pursuant to section 403(c) to develop adequate permit limitations and conditions to prevent unreasonable degradation of the marine environment. Due to this, EPA has decided that it is appropriate to continue to apply the potentially more stringent procedural requirements which accompany the "new discharger" classification to mobile developmental rigs operating in offshore areas. Thus developmental rigs discharging into offshore waters will continue to be included in the "new discharger" definition.

All mobile oil and gas drilling rigs operating in environmentally sensitive areas will continue to be considered "new dischargers" if they otherwise fit the definition. EPA believes that the commencement of operations in these environmentally sensitive areas (i.e., areas of biological concern) should be carefully examined before imposing appropriate permit limitations.

One commenter suggested that instead of EPA independently developing criteria to identify environmentally sensitive areas of concern on the OCS, these criteria should be subject to the ongoing development of a Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and EPA. It is intended that this MOU will provide the mechanism for coordination of NPDES permit issuance and lease sale activities. EPA will most certainly consult with all interested parties, including DOI, in developing appropriate criteria to determine areas of biological concern on the OCS. However, the Agency does not believe it is necessary to include the development of this criteria in ongoing negotiations with DOI on the MOU in order to ensure DOI input in the process.

EPA proposed to revise § 122.28 (previously § 122.59) to require Regional Administrators to issue general permits, where appropriate, for most discharges from oil and gas exploration and production facilities. General permits will be used for oil and gas facilities in existing lease sale areas, as well as future lease sale areas established by the Minerals Management Service (MMS), the office within the DOI responsible for offshore leasing activities. The use of a general permit will eliminate the post-lease delay in permit issuance because sufficient information should be available to determine permit conditions without application information from individual operators. With sufficient information to determine permit conditions, general NPDES permits may be issued for entire tracts or groups of tracts offered in OCS lease sales.

Four commenters objected to the issuance of general permits either prior to or at the time of the lease sale. The objections ranged from opposition because no general uniformity exists in OCS marine life to a concern that public input in the development of permit conditions would be bypassed. All of the commenters opposed to the concept of general permits feared that such permits would be issued without the accumulation of adequate information.

EPA is committed to the issuance of all permits when, and only when, an adequate amount of information has been gathered with which to determine permit conditions. The use of general permits is an administrative mechanism designed to minimize or eliminate administrative delays in those instances where no useful purpose would be served by issuing individual permits. In each and every case, where a permit, whether individual or general, is issued, EPA will ensure that all necessary and proper public participation measures are taken prior to the issuance of a permit.

Several of EPA's own Regional Offices were concerned about the timing for issuance of general permits. The proposed regulations provided that when petitioned to issue a general permit, the Regional Administrator should issue a project decision schedule providing for the issuance of the final general permit no later than the date of final notice of lease sale or six months after the date of the request. EPA's Regional Offices responsible for the issuance of the general permits pointed out that for some areas, sufficient information to determine appropriate permit limitations may not be available even though an EIS has been completed on the lease sale area. For other areas, final notices of lease sale have been issued by the Department of the Interior (DOI) prior to proposal of these regulations. In addition, DOI has approved significant revisions in its OCS oil and gas leasing program since the time of the proposal of changes to the NPDES regulations in June 1983 which could affect EPA actions. The new leasing program now offers lease sales in whole planning areas which may include ten to over 100 million acres. The new program processes a lease sale under an accelerated, streamlined timeframe. Resources may also be a problem where numerous lease

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sales are issued by DOI. In all these cases, it may be impossible for EPA to issue general permits within the timeframes proposed in the regulations.

EPA has, through this regulation, recognized the importance of prompt precessing of OCS permitting activities. As pointed out in the preamble to the proposal, the Regional Administrator should strive to meet all deadlines projected in project decision schedules. However, such decision schedules do not impose binding deadlines upon EPA. There may be situations in which factors beyond the control of EPA (e.g., the situations mentioned above by EPA Regional Offices) will delay issuance of final permits beyond the dates projected in the regulation. Because the regulation does not impose binding deadlines and is flexible enough to allow EPA to address such problem situations, EPA has not changed the proposed language in this final rule. Regional Administrators should work to ensure that permitting is tied, to the maximum extent possible, to lease sale actions.

Finally, although EPA's proposal committed the Agency to issue general permits for offshore oil and gas facilities, EPA's Regional Offices have pointed out that individual permits may be a more practicable option for permitting continental offshore stratigraphic test wells [COST wells]. Stratigraphic test wells are drilled to collect seismic and scientific information on the underlying geological strata in a lease sale area. Such wells must generally be drilled at least 60 days prior to the lease sale; usually only one well is drilled per lease area. In Alaska, where the drilling seasons are severely restricted by the weather, a COST well is often drilled at least a year in advance of the lease sale. The Environmental Impact Statement developed for the lease sale area is not available that far in advance of the sale. It is generally feasible and often less time-consuming under these circumstances to develop an individual permit that clearly restricts discharges to a single COST well. Since the intent of this regulation is to expedite the issuance of NPDES permits for offshore oil and gas activities, in circumstances where an individual permit can be issued for a COST well more expeditiously than a general permit, a Region may choose this option.

EPA has determined that each of the above discussed comments can adequately be addressed within the context of the proposed regulations and therefore has promulgated final rules which are identical to the proposed rules.

C. Modification of NPDES Permits (§ 122.62)

A new modification provision was proposed to allow NPDES permits which became final after August 19, 1981, to be modified to conform to the final rules adopted under the settlement agreement for, § 122.7(c) and 122.50(b) of the May 19, 1980 regulations (these sections correspond to § 122.41 (c) and (d) of the deconsolidated NPDES regulations). The cut-off date will prevent unnecessary modifications which could place an unreasonable strain on Agency or State resources. No adverse comments were received on this proposal; thus, the regulation is promulgated unchanged from the proposal.

IV. Effective Date

Section 553(d) of the Administrative Procedure Act (APA) requires publication of a substantive rule not less than 30 days before its effective date. In addition, section 3010(b) of RCRA provides that EPA's hazardous waste regulations, and revisions thereto, take effect six months after their promulgation. The purpose of these requirements is to allow permittees sufficient lead time to prepare to comply with new regulatory requirements. For the amendments proposed today, however, EPA believes that an effective date 30 days to six months after promulgation would cause unnecessary disruption in the implementation of the regulations and would be contrary to the public interest. Section 553(d)(1) of the APA provides an exemption from the requirement to delay the effective date of a promulgated regulation for 30 days in instances where the regulation will relieve restrictions on the regulated community. These amendments relieve restrictions on permittees under the NPDES, UIC, 404, and RCRA programs by providing greater flexibility in meeting the requirements of the programs. EPA believes that these are not the type of regulations that Congress had in mind when it provided a delay between the promulgation and the effective date of revisions to regulations. Therefore, EPA is making these rules effective today.

V. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments clarify the meaning of several generic permit requirements and generally make the regulations more flexible and less burdensome for affected permittees. They do not satisfy and of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute major rulemaking. This is not a major regulation. This regulation was submitted to the Office of Management and Budget (OMB) for review.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of entities. Today's amendments to the regulations clarify the meaning of several generic permit requirements and otherwise make the regulations more flexible and less burdensome for all permittees. Accordingly I hereby certify, pursuant to 5 U.S.C. 605(b) that these amendments will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control. Confidential business information.

40 CFR Part 123

Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Intergovernmental relations, Penalties, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 144

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply.

40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply.

40 CFR Part 233

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply, Indians—lands, Intergovernmental relations,

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Penalties, Confidential business information.

40 CFR Part 270

Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatments and disposal, Water pollution control, Water supply, Confidential business information.

40 CFR Part 271

Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: August 22, 1983.

Alvin L. Alm,

Deputy Administrator.

Authorities: Clean Water Act (33 U.S.C. 1251 et seq.), Safe Drinking Water Act (42 U.S.C. 300f et seq.), Clean Air Act (42 U.S.C. 7401 et seq.), Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

40 CFR Parts 122, 123, 124, 144, 145, 233, 270, and 271 are amended as follows:

PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

40 CFR Part 122 is amended as follows:

1. Section 122.2 is amended by revising the definition of "New discharger" as follows:

§ 122.2 Definitions.

* * * * *

"New discharger" means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective NDPES permit for discharges at that "site."

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area or biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a) (1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

* * * * *

2. Section 122.22 is amended by revising paragraphs (a)(1), (a)(3), and (d), and adding a note following (a)(1) as follows:

§ 122.22 Signatories to permit applications and reports.

(a) * * *

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 122.22(a)(1)(ii) rather than to specific individuals.

(2) * * *

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

* * * * *

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. Section 122.28 is amended by adding a new paragraph (c) as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Offshore Oil and Gas Facilities* (Not applicable to State programs.) (1) The Regional Administrator shall, except as provided below, issue general permits covering discharges from offshore oil and gas exploration and production facilities within the Region's jurisdiction. Where the offshore area includes areas, such as areas of biological concern, for which separate permit conditions are required, the Regional Administrator may issue separate general permits, individual permits, or both. The reason for separate general permits or individual permits shall be set forth in the appropriate fact sheets or statements of basis. Any statement of basis or fact sheet for a draft permit shall include the Regional Administrator's tentative determination as to whether the permit applies to "new sources," "new dischargers," or existing sources and the reasons for this determination, and the Regional Administrator's proposals as to areas of biological concern subject either to separate individual or general permits. For Federally leased lands, the general permit area should generally be no less extensive than the lease sale area defined by the Department of the Interior.

(2) Any interested person, including any prospective permittee, may petition the Regional Administrator to issue a general permit. Unless the Regional Administrator determines under paragraph (c)(1) that no general permit is appropriate, he shall promptly provide a project decision schedule covering the issuance of the general permit or permits

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for any lease sale area for which the Department of the Interior has published a draft environmental impact statement. The project decision schedule shall meet the requirements of § 124.3(g), and shall include a schedule providing for the issuance of the final general permit or permits not later than the date of the final notice of sale projected by the Department of the Interior or six months after the date of the request, whichever is later. The Regional Administrator may, at his discretion, issue a project decision schedule for offshore oil and gas facilities in the territorial seas.

(3) Nothing in this paragraph (c) shall affect the authority of the Regional Administrator to require an individual permit under § 122.28(b)(2)(i)(A) through (F).

4. Section 122.41 is amended by revising paragraphs (c) and (d) as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25)

* * * * *

(c) *Need to Halt or Reduce not a Defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Duty to Mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

* * * * *

5. Section 122.49 is amended by revising the introductory paragraph as follows:

§ 122.49 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

* * * * *

6. Section 122.62 is amended by adding a new paragraph (a)(15) as follows:

§122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

(a) * * *

(15) When the permit becomes final and effective on or after August 19, 1981, if the permittee shows good cause for the modification, to conform to changes respecting the following regulations issued under the Settlement Agreement dated November 16, 1981, in connection with *Natural Resources Defense Council* v. *EPA*, No. 80-1607 and consolidated cases: § 122.41(c) and (d).

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

40 CFR Part 123 is amended as follows:

1. Section 123.27 is amended by revising paragraph (c) and adding a new paragraph to the beginning of the note following paragraph (c) as follows:

§ 123.27 Requirements for Enforcement Authority.

* * * * *

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

* * * * *

PART 124—PROCEDURES FOR DECISION-MAKING

40 CFR Part 124 is amended as follows:

1. Amend paragraph (g) of § 124.3 by removing the word "or" before the words "major NPDES new discharger," and by adding the phrase "or a permit to be issued under provisions of § 122.28(c)" after the words "new discharger," and before the words "the Regional Administrator shall * * *".

2. Section 124.60 is amended by revising paragraph (a)(2) and adding new paragraphs (a)(3) and (c)(7) as follows:

§ 124.60 Issuance and effective date and stays of NPDES permits.

* * * * *

(a) * * *

(2) Whenever a source or facility subject to this paragraph or to paragraph (c)(7) of this section has received a final permit under § 124.15 which is the subject of a hearing request under § 124.74 or a formal hearing under § 124.75, the Presiding Officer, on motion by the source or facility, may issue an order authorizing it to begin discharges (or in the case of RCRA permits, construction or operations) if it complies with all uncontested conditions of the final permit and all other appropriate conditions imposed by the Presiding Officer during the period until final agency action. The motion shall be granted if no party opposes it, or if the source or facility demonstrates that:

(i) It is likely to receive a permit to discharge (or in the case of RCRA permits, to operate or construct) at that site;

(ii) The environment will not be irreparably harmed if the source or facility is allowed to begin discharging (or in the case of RCRA, to begin operating or construction) in compliance with the conditions of the Presiding Officer's order pending final agency action; and

(iii) Its discharge (or in the case of RCRA, its operation or construction) pending final agency action is in the public interest.

(3) *For RCRA only,* no order under paragraph (a)(2) may authorize a facility to commence construction if any party has challenged a construction-related permit term or condition.

* * * * *

(c) * * *

(7) If for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a finally effective permit to discharge at a "site," but which is not a "new discharger" or a "new source," the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the administrative review, he may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review unless otherwise modified by the Presiding Officer under paragraph (a)(2) of this section.

3. Section 124.119 is amended by adding new paragraphs (c) and (d) as follows:

§ 124.119 Presiding Officer.

* * * * *

(c) Whenever a panel hearing will be held on an individual draft NPDES permit for a source which does not have an existing permit, the Presiding Officer, on motion by the source, may issue an order authorizing it to begin discharging if it complies with all conditions of the draft permit or such other conditions as may be imposed by the Presiding Officer in consultation with the panel. The motion shall be granted if no party opposes it, or if the source demonstrates that:

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(1) It is likely to receive a permit to discharge at that site;

(2) The environment will not be irreparably harmed if the source is allowed to begin discharging in compliance with the conditions of the Presiding Officer's order pending final agency action; and

(3) Its discharge pending final agency action is in the public interest.

(d) If for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a finally effective permit to discharge at a "site," but which is not a "new discharger" or "new source," the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the nonadversary panel procedures, he may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review unless otherwise modified by the Presiding Officer under paragraph (c) of this section.

PART 144—REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL PROGRAMS UNDER THE SAFE DRINKING WATER ACT

40 CFR Part 144 is amended as follows:

1. Section 144.4 is amended by revising the introductory paragraph as follows:

§ 144.4 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

* * * * *

2. Section 144.32 is amended by revising paragraph (a)(1); adding a new note following paragraph (a)(1); revising paragraph (a)(3); and adding a new paragraph (d) as follows:

§144.32 Signatories to permit applications and reports.

(a) * * *

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decisionmaking functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note.—EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 144.32(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 144.32(a)(1)(ii) rather than to specific individuals.

(2) * * *

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

* * * * *

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

PART 145—REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL PROGRAMS UNDER THE SAFE DRINKING WATER ACT

40 CFR Part 145 is amended as follows:

1. Section 145.13 is amended by revising paragraph (c) and adding a new paragraph to the beginning of the note following paragraph (c) as follows:

§ 145.13 Requirements for enforcement authority.

* * * * *

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

* * * * *

PART 233—DREDGE OR FILL (404) PROGRAM UNDER SECTION 404 OF THE CLEAN WATER ACT

40 CFR Part 233 is amended as follows:

1. Section 233.6 is amended by revising paragraphs (a)(1), (a)(3), and (d) and adding a new note following (a)(1) as follows:

§ 233.6 Signatories to permit applications and reports.

(a) * * *

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy—or decisionmaking functions for the corporation, or (ii) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note.—EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 233.6(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 233.6(a)(1)(ii) rather than to specific individuals.

(2) * * *

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations

Encl 1-11

of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

* * * * *

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

2. Section 233.7 is amended by revising paragraph (d) as follows:

§ 233.7 Conditions applicable to all permits.

* * * * *

(d) The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Section 233.28 is amended by revising paragraph (c) and adding a new paragraph to the beginning of note following paragraph (c) as follows:

§ 233.28 Requirements for enforcement authority.

* * * * *

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

* * * * *

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

40 CFR Part 270 is amended as follows:

1. Section 270.3 is amended by revising the introductory paragraph as follows:

§ 270.3 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

* * * * *

2. Section 270.11 is amended by revising paragraph (a)(1), (a)(3), and (d) and adding a new note following (a)(1) as follows:

§ 270.11 Signatories to permit applications and reports.

(a) * * *

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decisionmaking functions for the corporation, or (ii) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note.—EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 270.11(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 270.11(a)(1)(ii) rather than to specific individuals.

(2) * * *

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

* * * * *

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. Section 270.30 is amended by revising paragraph (d) as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

* * * * *

4. Section 270.51 is amended by revising a new paragraph (d) as follows:

§ 270.51 Continuation of expiring permits.

* * * * *

(d) *State Continuation.* In a State with an hazardous waste program authorized under 40 CFR Part 271, if a permittee has submitted a timely and complete application under applicable State law and regulations, the terms and conditions of an EPA-issued RCRA permit continue in force beyond the expiration date of the permit, but only until the effective date of the State's issuance or denial of a State RCRA permit.

PART 271— EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

40 CFR Part 271 is amended as follows:

1. Section 271.16 is amended by revising paragraph (c) and adding a new paragraph to the beginning of the note following paragraph (c) as follows:

§ 271.16 Requirements for enforcement authority.

* * * * *

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent the State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable

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statute, may commence separate actions for penalties.

* * * * *

[FR Doc. 83-23750 Filed 8-31-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[SW-6-FRL 2427-2]

Hazardous Waste Management Programs, Texas; Interim Authorization Phase II, Component C

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Hazardous Waste Management Program.

SUMMARY: The State of Texas has applied for Interim Authorization, Phase II, Component C, permitting program for land disposal facilities. EPA has reviewed Texas' application for Phase II, Interim Authorization, Component C, and has determined that Texas' hazardous waste program is substantially equivalent to the Federal program covered in Component C. The State of Texas is hereby granted Interim Authorization for Phase II, Component C, to operate the State's hazardous waste program covered by Component C in lieu of the Federal program in the State of Texas.

EFFECTIVE DATE: Interim Authorization for Phase II, Component C, for Texas shall become effective September 1, 1983.

FOR FURTHER INFORMATION CONTACT: H. J. Parr, Hazardous Materials Branch, Air and Waste Management Division, Environmental Protection Agency, 1201 Elm St., Dallas, Texas 75270, Telephone (214) 767-2645.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980, Federal Register (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. RCRA includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive Final Authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous waste, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State Programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the July 26, 1982, Federal Register (47 FR 32373), the Environmental Protection Agency announced that States could apply for Component C of Phase II, Interim Authorization, Component C, published in the Federal Register July 26, 1982 [47 FR 32274], contains standards for permitting facilities that dispose hazardous waste in waste piles, surface impoundments, land treatment, and landfills.

The State of Texas received Interim Authorization for Phase I on December 24, 1980, and Interim Authorization for Phase II, Components A & B, on March 23, 1982.

Draft Application

The State of Texas submitted its draft application for Phase II, Component C, Interim Authorization, on January 4, 1983. After detailed review, EPA transmitted comments to the State on February 2, 1983.

Three major issues were identified which the State was required to correct before being authorized. These issues involved the substantial equivalence of the State's requirements with EPA's program requirements in the following areas: (1) The construction of a new facility prior to the issuance of a permit; (2) TDWR's requirements for groundwater monitoring; and (3) necessary additions to the Memorandum of Agreement.

Each of these issues was resolved at the time of submittal of the complete application. Specifically, the Texas Legislature amended the statute so that the state could require permits for construction related elements of all hazardous waste management facilities; TDWR amended its groundwater monitoring requirements to align with those of EPA; and a Memorandum of Agreement was submitted.

On May 16, 1983, Texas submitted to EPA an official application for Phase II, Component C. An EPA review team consisting of both Headquarters and Regional personnel made a detailed analysis of Texas' hazardous waste management program.

EPA comments were forwarded to the State on June 30, 1983. No major questions were raised in the comments; however, some minor clarifications were requested. By letter dated July 13, 1983, the State responded to all the issues raised by EPA.

I conclude that the Texas application for Interim Authorization to operate the RCRA Phase II, Component C program meets all of the statutory and regulatory requirements and as such I approve this authorization.

Public Hearing and Comment Period

As noticed in the Federal Register on May 27, 1983, EPA gave the public until July 7, 1983, to comment on the State's application. EPA also issued a public notice for a hearing to be held in Austin, Texas on July 14, 1983, if significant public interest was expressed. EPA received requests to hold the hearing from seven (7) public interest groups and one (1) individual.

EPA found that there was significant public interest in holding a hearing on the Texas application for Phase II, Component C, Interim Authorization. Consequently on the evening of July 14, 1983, in Austin, Texas, EPA held such a public hearing and four presentations were made at that time. In addition, Region VI received eleven (11) written comments on the Texas application. Because of the interest exhibited, the comment period was extended by the hearing officer until July 21, 1983.

All comments whether presented at the hearing or in writing, were considered before reaching a decision on the Texas application for Phase II Interim Authorization for Component C.

None of the commenters opposed granting the state of Texas authorization. Eight (8) commenters specifically supported the authorization and urged EPA to expeditiously grant the authorization. Six (6) commenters made comments which were not specific to the authorization decision and one commenter supported the concept of authorization both in general and for

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
3046 (501)

October 22, 1984

Instruction Memorandum No. 85-62
Expires 9/30/85

To: All State Directors

From: Director

Subject: Reporting Procedures on Releases of Hazardous Materials or Newly Discovered Hazardous Waste Sites

Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) requires that any person in charge of a facility (including Federal lands and other facilities) immediately report any release or illegal dumping of hazardous materials or abandoned/inactive hazardous waste disposal sites on public land as soon as the incident or site is known. Thus, any such release, illegal dumping site, or newly discovered hazardous waste site on the public land that is found by, or reported to, any Bureau employee or BLM contractor must be reported in the manner described below.

Further, when a BLM employee or contractor discovers a release or hazardous waste site on acquired lands or Federal lands administered by another agency, the site must be reported by BLM in the same manner as sites discovered on BLM administered land. In such cases, the BLM District Manager or State Director should notify the appropriate supervisor of the other agency (USFS, NPS, etc.) that the site has been reported to EPA. Failure to report such spills and sites could result in criminal liability.

Please instruct your staff that any spill, release, unauthorized dumping or abandoned or inactive waste disposal site suspected of involving hazardous waste is to be reported immediately to your State Office Coordinator for Hazardous Waste. BLM employees are expressly directed not to attempt to investigate, handle or risk exposure to suspected hazardous materials.

As soon as possible after a hazardous waste site is discovered on public lands and it is reported to EPA, a written report should be sent to the Interior Office of Environmental Project Review (OEPR) through Director (501). Questions should be addressed to WO-501 at FTS 343-5517. This report should contain:

1. The name of the site.
2. The location of the site.
3. The name or names of operator, if known.
4. Name or names of other responsible parties, if known.
5. A brief description of the site, type of waste, etc., if determinable from a safe distance.

The State Office is to immediately transmit the information by telephone to the following offices outside BLM.

1. The National Response Center Duty Office at HQ, USCG; Washington, D.C. (Commercial Toll Free: (800) 424-8802 or (FTS) 426-2675).
2. Local law enforcement authority having jurisdiction.
3. State DEQ Hazardous Waste Coordinator.
4. Hazardous Waste Coordinator at appropriate EPA Regional Office.

Following the above notifications, the incident or site is to be reported to WO-501. Questions should be adressed to Bernie Hyde or Robert Sulenski, WO-501, at FTS 343-5517.

Robert H. Lawton

Robert H. Lawton
Assistant Director, Mineral Resources and Mining Law

3046 (501)

DRAFT

Instruction Memorandum No. 85-62, Change 1
Expires 9/30/85

To: All State Directors

From: Director

Subject: Reporting Procedures on Release of Hazardous Materials or Newly Discovered Hazardous Waste Sites -- Amendment

Some field offices have pointed out that there are cases in which reporting hazardous waste sites discovered on another Federal agency's lands could result in duplication of effort and confusing double reporting of a site. It is important to avoid any extra costs or confusions. Therefore, Instruction Memorandum No. 85-62 is amended to read as follows:

Paragraph #2

Further, when a BLM employee or contractor discovers any hazardous materials release or hazardous waste site on Federal lands administered by another agency, the site must be reported immediately to the BLM State Office Hazardous Materials Management Coordinator. In such cases, the State Office Coordinator or appropriate BLM manager will notify the appropriate supervisor of the other agency in writing of the discovery and request that the site be reported. The State Office may at their discretion also report the site to EPA. Remember, failure to report such spills and sites could result criminal liability.

cc
501 RF, 670 RF, 500 RF, 855 RF, W.F0024E
501:EHyde:smb:11/13/84:343-5517

TC 855- 11/13

Section 3

MBO

JUN 19 1984

Memorandum

To: Assistant Secretary, Land and Minerals Management

From: Director, Bureau of Land Management

Subject: Proposed MEO Schedule for Hazardous Materials Management

At your request we have prepared and enclosed a proposed MEO schedule for Hazardous Materials Management in the Bureau of Land Management.

The schedule addresses:

- Program Development and Implementation
- Identification, Evaluation and Priority Cleanup Actions in FY 1985
- Site Identification and Action Planning Schedules
- Programmed Cleanup Schedules
- Safety and Legal Sufficiency Training for Employees
- Natural Resource Damage Assessment Development

Many action steps in the schedule are dependent upon the availability of funds, some are dependent upon interim decisions. Thus, a significant number of the MEO action steps have a "NOT SET" date. As funding for FY 1985 and 1986 becomes more stable, we expect to set these dates. It should also be emphasized that the actions in this MEO schedule are not the only hazardous materials management related actions in the Bureau, but are rather, the basic sequence of tasks required to establish a program to prudently respond to current law. The Mineral Programs, Lands Programs, Renewable Resource Programs and Technical Support Program all have hazardous material management related program responsibilities either implicit or explicit in their own MEO schedules. Additionally, the Hazardous Materials and Program Management Staff, several other divisions, and field offices carry out daily or weekly activities dealing with hazardous materials laws and problems.

The Bureau is now exploring approaches to reduce costs and increase effectiveness in program management and remedial actions. We have recently learned that at least two sites on the National Priority List for Superfund are on the public lands. We are working with EPA to see how this affects our programs, and what financial arrangements can be made to resolve the problems at the lowest cost in time and Federal funds.

While some dates are as yet uncertain, the enclosed MBO schedule proposal outlines a multi-pronged strategy of attack on these problems over the next several years. We believe it will meet with your approval. We are prepared to brief you on it at your convenience.

James M. Parker
Acting

Enclosure - Proposed MBO Schedule

CC: 200, 210, 310, 500, 610, 640, 670, 700, 710, 810;
690/RF/HF
Sulenski/elh/01-20-84/653-2256/LC 009U
Revised 4/24/84/jdi

SECRETARIAL MBO - Hazardous Materials Management

In Support of Objective II

Task J - Develop and Implement a Hazardous Materials Management Program for BLM

Item		Date
Sub-task 01		
Develop and implement procedures for hazardous materials management in compliance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Resource Conservation and Recovery Act (RCRA), Safe Drinking Water Act (SDWA), Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), and other laws.		
Action Plan A		
Develop BLM policy and strategy for management of hazardous materials under RCRA and other laws.		
Action Steps		
1. Establish Bureau-wide multi-disciplinary task force	Lawton	08/17/83
2. Identify problem areas by commodity and discipline	Task Force	11/23/83
3. Report to Director on problem areas, potential solutions	Lawton	12/08/83
4. Present final task force results, recommendations, etc., to Director for policy decisions	Lawton	08/03/84
5. Director presents program to A/S LMM	Director	08/31/84

Item	Responsible Party	Date
Action Plan B		
Affected divisions/commodities implement Director's policies for compliance with RCRA and other laws		
Action Steps		
1. Establish Bureau-wide multi-disciplinary policy group on HMM	Director	Not set 4/
2. Complete analysis of financial assurances techniques	Lawton	05/18/84
3. Complete other analyses as appropriate or required	AD's	Not set 2/
4. Divisions/commodities evaluate financial assurances techniques for relevance to their program and revise financial assurance/compliance/monitoring/inspection and other regulations as needed	ADs	Not set 3/
5. Divisions/commodities suggest legislative changes if needed	ADs	Not set 3/
6. Divisions/commodities request Solicitor's opinions as needed	ADs	Not set 3/
7. Divisions/commodities provide training for implementation of revised rules	ADs	Not set 3/
8. Division/commodities provide training for implementation of revised rules	ADs	Not set 3/
9. Prepare public affairs plan for HMM	Morris/Lawton	08/31/84
10. Prepare community affairs plan for HMM	Lawton/SDs	08/31/84

11. Prepare coordination plan with States for HMM	Lawton/SDs	Not set 4/
12. Prepare coordination plan with other Federal agencies on HMM	Lawton/SDs	Not set 4/
13. Review plans	Director	Not set 3/
14. Plans approved by Director	Director	Not set 3/
15. Prepare policy/procedures on contracting for HMM	Ondroff/Lawton	Not set 3/
16. Develop State-level emergency response plans	SDs	Not set 3/

Item	Responsible Party	Date

Sub-task 02

Identification and evaluation of abandoned, active, and suspected hazardous materials sites on public lands

Action Plan A

Review of existing listings

Action Steps

1. Field review of EPA ERRIS listings	SDs	11/30/83
2. Field review of EPA NPL listings	SDs	10/31/83
3. Field review of EPA Open Dump listings	SDs	12/30/83
4. Complete field review of existing BLM R&PP leases and sales	Edwards	Not Set 2/
5. Obtain and evaluate State priority lists	SDs	02/24/84
6. Develop ADP system for CERCLA site reporting and status reports	Lawton	05/04/84

7. SOs prioritize sites on State-by-State basis	SDs	05/04/84
8. WO reviews State submissions and recommends candidates for A/S LMM consideration	Director	06/01/84
9. A/S LMM decides on candidates and types of action (cleanup, litigation, etc.)	A/S LMM	06/29/84
10. Initiate court action/negotiation with operator(s) of site(s)	Lawton/SOL/Justice	Not set 1/ (09/30/84)
11. Develop RFP and let phased contract for; 1) waste characterization 2) detailed characterization of selected sites; 3) remedial action plans; and 4) supervision of cleanup *	Lawton/SDs	Not Set 2/ (10/01/84)
12. Review waste characterizations and authorize development of detailed characterization of selected sites	Lawton/SDs	Not Set 2,3/ (11/01/84)
13. Review detailed characterization of selected sites and authorize development of remedial action plans	Lawton/SDs	Not Set 2,3/ (02/01/85)
14. Interagency approval of remedial action plans	BLM/EPA/States	Not set 2,3/ (05/15/85)
15. Develop RFP and let contract for cleanups and authorize supervision	Lawton/SDs	Not Set 2,3/ (09/15/85)
16. Begin cleanup	Lawton/SDs	Not Set 2,3/ (10/15/85)
17. Complete cleanup	Lawton/SDs	Not Set 2,3/

* (The process described in Steps #11 through 17 may be able to be shortened by use of alternative contracting strategies).

Item	Responsible Party	Date
Action Plan B		
Determine and implement most cost effective and efficient mix of means of HMM site identification and evaluation of other than sites identified under Subtask 02, Action Plan A.		
Action Steps		
1. Initiate IA with EPA EPIC for CA pilot project	Lawton	12/12/83
2. Complete IA with EPA	Pitts/Lawton	05/04/84
3. EPA/EPIC furnishes pilot project products	EPA	02/22/85
4. Ground-truthing CA pilot project begins	SD (CA)	Not set 2,3/ (04/19/85)
5. Initiate on-the-ground NV pilot project using soil survey personnel (350,000 to 500,000 acres) in conjunction with on-going soil surveys	Templeton/ SD (NV)	11/23/83
6. Complete NV pilot project	Templeton/ SD (NV)	09/30/84
7. Develop specific proposals for USGS pilot project for site identification	USGS	04/30/84
8. Evaluate GS proposals in regard to hazardous materials site identification and/or site characterization	Lawton	Not set 1/ (05/30/84)

9. Initiate GS proposed pilot project	USGS	Not set 1,2/
10. Complete GS pilot project	USGS	Not set 1,2/
11. Evaluate all pilot projects for most cost-effective mix	Lawton	Not set 3/ (05/01/85)
12. Report findings to AS/LMM	Director	Not set 3/ (06/03/85)
13. AS/LMM decides on site priorities	A/S LMM	Not set 3/ (07/08/85)
14. Develop MOUs, costs, schedules, etc., to carry out site identification and evaluation on a priority basis	Lawton/SDs	Not set 2/ (09/09/85)

Sub-task 03

Programmed cleanup of identified sites on a priority basis and/or initiate court action

Item	Responsible Party	Date
Action Plan A		
Initiate programmed cleanup and/or court actions		
Action Steps:		
1. Initiate negotiations/legal action as appropriate with operator(s) of site(s)	SD/SOL/Justice	Not set 3/ (12/15/85)
2. Develop RFP and let phased contract for; 1) waste characterization; 2) detailed characterization of selected sites; 3) remedial action plans; and 4) supervision of cleanup	SDs/SCD	Not set 2,3/ (03/15/86)

2.	Review waste characterization and authorize development of detailed characterization of selected sites	SDs/SCD	Not Set 2,3/ (4/15/86)
3.	Review detailed characterization of selected sites and authorize development of remedial action plans	SDs/SCD	Not Set 2,3/ (07/15/86)
4.	Interagency approval of remedial action plans	BLM/EPA/States	Not Set 2,3/ (11/30/86)
5.	Develop RFP and let contract for cleanup and authorize supervision	SDs/SCD	Not Set 2,3/ (03/30/87)
6.	Begin cleanup	SDs/SCD	Not Set 2,3/ (04/30/87)
7.	Complete cleanup	SDs/SCD	Not Set 2,3/

Item	Responsible Party	Date

Subtask 04

Develop/obtain and promulgate safety and other training materials for field personnel

Action Plan A

Develop training for BLM personnel who may become involved with hazardous materials

Action Steps:

1.	Finalize interim instruction memorandum outlining safety procedures	Lawton	04/12/84
2.	Distribute safety procedures IM	Lawton	04/17/84
3.	Develop employee Training Plan	Lawton/Pitts	09/30/84

4.	Contract for all-employee safety package	Lawton/Pitts	Not set 2/ (11/16/84)
5.	Distribute training to field offices	Lawton	Not set 3/

Action Plan B

Develop safety procedures for personnel involved in hazardous materials investigations

Action Steps:

1.	Develop additional interim procedures required for safety of personnel charged with the duty of actively searching for hazardous materials sites as part of investigations, ground-truthing, or characterization studies.	Lawton	Not set 2/
2.	Distribute safety procedures prior to scheduled field operations	Lawton	Not set 2/
3.	Incorporate safety procedures in scheduled hazardous materials training courses	Lawton	Not set 2/
4.	Incorporate portions of specialized EPA training in scheduled hazardous materials training	Lawton	Not set 2/
5.	Present first training course	Lawton	Not set 2/
6.	Provide specialized EPA training to affected field personnel	Lawton	Not set 2/

Action Plan C

Provide training in contract writing and review for personnel involved in programmed cleanups.

Action Steps:

1. Develop training for contract writing/ review	Lawton/Pitts	Not set 2/
2. Develop training for clean-up plan writing/review	Lawton	Not set 2/
3. Develop training for clean-up plan supervision	Lawton	Not set 2/
4. Provide training at appropriate site	Lawton	Not set 2/

Action Plan D

Develop other training packages to respond to field needs

Action Steps:

1. Develop and distribute training packages on BLM hazardous materials management responsibilities	Lawton/Pitts	Not Set 2/
2. Develop additional training packages as needed	Lawton/Pitts	Not Set 2/

Sub-task 05

Develop procedures for and implement natural resource damage assessments for field use under CERCLA

Action Plan A

Develop and implement natural resource damage assessment procedures.

Action Steps

Item		Responsible Party	Date
1.	DOI (OEPR) provide initial guidance	Blanchard (OEPR)	11/01/83
2.	WO Divisions develop interim damage assessment procedures	Morck/Lawton	Not set 2/
3.	WO Divisions provide interim damage assessment procedures to field offices	Morck/Lawton	Not set 2/
4.	DOI (OEPR) provides final damage assessment procedures	Blanchard (OEPR)	Not set 3/
5.	WO Divisions provide DOI procedures and BLM supplementary to field offices	Morck/Lawton	Not set 1/

1/ Contingent on other agency scheduling

2/ Contingent on availability of funds

3/ Contingent on accomplishment of earlier step by stated date

4/ Contingent upon Director's decision